Q. Now, are you real sure that it was on the day of the accident, or the day before, that you started the fire?
A. I started the fire the day of the accident.
Q. You are sure about that?
A. Yes, I am sure about that.
Q. No mistake about it?
A. No mistake.
Q. And who started it the day before?
A. Stensland.
Q. You say you started the fire by using waste?
A. Yes, cotton waste.
Q. Which day was this?
A. It was the day of the accident.
Q. Well, why didn't you use coal oil, if all the rest did?
149 A. Well, I had the waste handy. I took the first I could get hold of, you see.
Mr. Arctander: Will you speak plainly?
A. When I had cotton waste handy, I used to take that, and it burns awfully nice.

(Mr. Hadley:)

Q. You say that Stensland had started the fire before using kerosene?
A. Yes.
Q. Are you sure it was not this same day?
A. It was the day before.
Q. You say there was no coal oil left to light the lanterns when you returned the night before?
A. There was no more left.
Q. Why wasn't there?
A. Well, it was all used up. We didn't have any more with us.
Q. You mean it was all used up in one day?
A. Well, I don't know if the can was filled that day or was filled before that day, but we didn't have enough to fill the lantern that night before the accident happened. I know that.
Q. You say you had stepped into the galley or into the cabin just before the explosion took place?
A. Yes.
Q. To oil the engine?
A. Oil the engine.
Q. How long had you been there?
A. O, about two minutes.
Q. And you saw the plaintiff pouring kerosene on the fire?
A. Yes.
150 Q. And drop a lighted match?
A. Yes.
Q. And the explosion took place immediately?
A. Yes.
Q. Do you know for sure whether the match reached it before the explosion took place?
A. What?

Q. How?
A. Well, he just—he light the match and drop it and it went off all at once.
Q. As a matter of fact, it was all so sudden you don't know which happened first, do you?
A. Well, when I saw it, it went off at once, the stove and the whole business.
Q. It happened all at once?
A. Yes.
Q. Now, how long did you say it takes for this stove to cool off when there has been a hot fire in it?
A. Well, about three or four minutes, it don't take more.
Q. Three or four minutes after there has been a hot fire, for it to cool off?
A. Yes sir.
Q. What had you had for lunch?
A. We had coffee and vegetable soup.
Q. Soup?
A. Yes.
Q. The soup was hot when it was served?
A. Yes, it was hot.
Q. And Stensland took the lunch up on deck from the stove?
A. Yes.
651 Q. Had he cooked the lunch?
A. Well, I was cooking, but I didn't know how to put up that vegetable soup; you see he was with me there and helped me.
Q. Who steered the boat while the meal was being cooked?
A. John Jorgenson.
Q. Jorgenson?
A. Yes.
Q. You were not steering the boat yourself?
A. No.
Q. Any of the time?
A. Well, when we went out I was steering for a little while, but just for a little while.
Q. What did you do immediately after eating your lunch?
A. We was running along the shore and was hunting for ducks. There was a few ducks along there.
Q. How long?
A. About two hours and a quarter.
Q. Before the plaintiff went down to start this fire?
A. Yes.
Q. What time did he go down to start the fire?
A. Two o'clock.
Q. Two o'clock. How long did it take you to eat your lunch?
A. O, about ten or fifteen minutes.
Q. Ten or fifteen minutes?
A. Yes.
Q. You say you saw Stensland bring that can aboard and place it on the bench?
A. Yes.

Q. Do you know where he got it, or where he got the contents?

A. No, I don't know where he got it.

152 Q. All you know is that he put it there?

A. He put it there. He came down and put it there.

Q. You say you didn't see the plaintiff put wood in the stove, you just saw him as he was pouring the oil?

A. Yes, I saw him when he poured the oil in.

Q. Was the plaintiff looking at the stove or at the engine at the time when he poured this oil in?

A. Yes, he was just pouring a little oil in there.

Q. How is that?

A. Just pouring a little oil in when he struck the match and dropped it.

Q. Where was he looking when he did it?

A. He was looking in the stove.

Q. Looking in the stove?

A. Yes.

Q. You didn't examine the stove when the plaintiff went down to start the fire, did you.

A. No.

Q. You don't know of your own knowledge, whether there was any fire in it then or not, do you?

A. Well, the fire must be out by that time, you see.

Q. Well, you don't know whether it was there at that time, do you?

A. No, I didn't look in the stove.

Q. You just assumed that it was out?

A. Well, when I went up the fire was almost burned out, that was only ashes left; so I can't see how the fire could be there.

Q. But you don't know, you just assume?

A. No, I didn't see it.

153 Q. Was it hot in the cabin at the time?

A. No, it was not very hot.

Q. How do you know the fire was almost burned out, did you take the lid off the stove and look in when you went up?

A. Well, Stensland took the pots away from the stove and then I had to put the lids on, so I had to see something then.

Q. But there was some fire in there?

A. Well, there was some ashes just, but it was not real cold, but at the same time there was not any fire in it.

Q. Well, there were embers there?

A. Yes.

Q. How do you know there were no life preservers aboard?

A. I didn't find any.

Q. Did you look on the upper bunk where they should have been?

A. There was nothing in the cabin.

Q. Did you look there?

A. We couldn't get down when the fire was——

Q. How do you know, then?

A. Well, saw it before and afterwards.

Q. Why didn't you call their attention to it, if you knew it before?

A. Well, we called, but the boss said never mind, didn't need any.

Q. When did you?

A. When we went out.

Q. But you don't know whether they were on that upper bunk there or not, do you.

A. It was not on the upper bunk, I know that.

Q. Did you look to see?

A. Sure.

Q. The plaintiff jumped in the Bay right away, to put out the fire, didn't he?

A. Well, he was running around on the deck, trying to get something to get ahold of.

Q. Didn't Mr. Stensland shove him overboard into the water?

A. No, didn't shove him overboard.

Q. Didn't help him get over?

A. No.

Q. Didn't they throw a plank over to him?

A. Well, but the plank, they throwed the plank over, John Jorgenson throwed the plank over, but the boat was about 40 feet away from him at that time.

Q. He got the plank, however?

A. He swam to the plank. The plank was about 40 or 50 feet from him where he jumped over.

Q. As a matter of fact, you don't know what was in that can, do you?

A. Well——

Q. You don't know, of your own knowledge, what was in that can, do you?

A. I don't know what it was, no sir.

Q. You just assume that it was gasolene because there was an explosion, don't you?

A. Yes.

Q. That is the case, isn't it? It might have been coal oil for all you know?

A. I never seen coal oil explode that way.

Q. You know that coal oil will explode, under certain conditions?

A. Well——

Q. Don't you?

A. Yes, I know it will explode if there is—if they pour coal oil into a real hot place, then it explodes, of course.

Q. What was that?

(Answer read.)

Q. Was there a load report when this explosion took place? or was it just a big sudden flash?

A. Well, it was enough pressure to throw me out on deck.

Q. What?

A. I got throwed out from the hole up on deck.
Q. Was there any noise, or do you know?
A. It was noise all right, but I can't tell just exactly how it sounds.

(Witness excused.)

JOHN JORGENSON, produced as a witness on behalf of Plaintiff, having been first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Mr. Aretander:)

Q. Where do you live, John Jorgenson?
A. I live in Seattle.
Q. Are you going away from here now?
A. Going away this week.
Q. This week. Where?
A. To Alaska.
156 Q. On a halibut fishing boat?
A. Yes.
Q. You expect to be gone during the summer?
A. Yes.
Q. Do you know the plaintiff, Ole Sandanger?
A. Yes, I know him from back home.
Q. From back home where?
A. In Norway.
Q. In Norway. You have known him for many years?
A. Known him for many years.
Q. Where were you working during the summer of 1916, and for whom?
A. Carlisle Packing Co.
Q. Carlisle Packing Company. And where?
A. Alaska, Cordova.
Q. And when did you commence to work for them that year?
A. February, 8th of February.
Q. Do you remember the time plaintiff was hurt there by being burned more or less?
A. Yes.
Q. Do you remember what time that was?
A. It was the 7th of March.
Q. 7th of March, 1917?
A. 1917.
Q. Now, during the months of February and March and up to that time that he was hurt, where had you worked most of the time at what had you worked during February and March after you started there in 1917?
A. Worked for the Carlisle.
Q. Yes, but at what?
157 A. Carpenter helper.
Q. Was that in 1916 or 1917?
A. 1917.

Q. In 1917?
A. Yes.
Q. How much of your time had you spent aboard this boat No. 2, at the last witness mentioned, up to the time that plaintiff was art?
A. Well, using that boat once in a while in the spring, you know.
Q. How many days, about, had you been on it?
A. Say about a couple of weeks?
Q. A couple of weeks?
A. Yes.
Q. Steadily?
A. Not steadily, no.
Q. But about so much as fourteen days all told, is that what u mean, that you had been fourteen days on board it?
A. We had been using the boat steady for ten days.
Q. And you had been on her during those ten days?
A. How?
Q. Had you been working on her during those ten days?
A. Yes sir.
Q. How?
A. Yes sir.
Q. And how much, outside of those ten days that you worked ere steadily, had you been on her during that spring?
A. Outside of that I was working on the cannery.
Q. You didn't work on the boat more than the ten days?
A. That is all.
Q. What kind of fuel did you have during that spring on the boat?
A. We was using wood and boxes.
Q. Did you have any coal?
A. No coal at all.
Q. What was the condition of the wood that you used, I mean e fuel for the stove—you understand me right—the fuel for the ove?
A. We were using egg boxes, yes, egg boxes.
Q. Wood from boxes?
A. Yes.
Q. Different kinds?
A. Yes sir.
Q. And what was the condition of the wood in regard to being y or wet during the time you were on it?
A. It was dry—wet—wet.
Q. It was wet?
A. Yes.
Q. Where was it kept?
A. It was kept in the fish hold.
Q. And what chance was there to keep it dry, if it was dry when came aboard, after it went into the fish hold?
A. There was no place to keep it dry. We took it off the dock n the cannery and it was wet before we put it on the boat, and we ok it from the hold to the forecastle.

Q. How could you start a fire with that wood in the condition it was?

A. We could not start no fire without kerosene.

Q. State whether you did that right along?

A. Right along.

159 Q. You used kerosene to light the fire?

A. Yes.

Q. Did you have anything to have kerosene in for that purpose?

A. We had a gallon can.

Q. A gallon can?

A. Just for that purpose.

Q. For any other purpose as well?

A. And for lanterns.

Q. And for filling the lanterns?

A. Yes, filling the lanterns.

Q. Had you yourself been at any time during the ten days that you were on board that boat, working on board the boat—had you been filling that kerosene can—had you any time?

A. I was filling it lots of times.

Q. And where did you get the oil to fill it with, where was that oil kept?

A. It was kept in a special oil house or oil room, you see.

Q. Oil room?

A. Yes.

Q. What kind of oils were there kept there?

A. There was kept gasolene and kerosene.

Q. What were these two oils kept in in that house—in that oil house, what receptacles was it in?

A. Well——

Q. Drums or——

A. There was hundred gallons drums.

Q. Hundred gallon drums in there?

A. Yes.

160 Q. What if anything was there to show, either about the color of the drums or as to being any signs or letters on the different drums, to show what drums there was kerosene in and what there was gasolene in?

A. The drums was like each other, old drums; you couldn't tell the difference, which was which, except you took the head off and smelled on it.

Q. State whether or not there was any different painting on the different drums, whether gasolene or kerosene, whether there was any different paint on them?

A. The same paint.

Q. The same paint. Were there any marks on them in any way indicating either kerosene or gasolene in the drum?

A. I couldn't tell any difference.

Q. Were there any marks?

A. I didn't see any.

Q. Well, if there had been any would you have seen it?

A. Well, of course, I think so.

Q. Was any name painted on them, either "Gasolene" or "Kerosene" painted on them?
A. No, there wasn't. There was some kind of name, but you couldn't figure up what it was; scratched out, you see, you couldn't figure out what it was. And so the time I was over there, I went over to John Peterson and asked him. He was supposed to know it.
Q. The port engineer?
A. Yes, the port engineer; and asked him which was which.
Q. You asked him which was gasolene and which was kerosene?
A. Yes, and he didn't know himself, except he smelled on it, and that was the only way he could find it out.
Q. He came in to help you?
A. He came in to help me.
Q. To get the proper drum to fill your can with?
A. I went to Peterson and he had to show me which drum to take of.
Q. When you were going to take kerosene?
A. When I was going to take kerosene.
Q. Were you on board that boat the day before this accident happened?
A. No.
Q. Were you there the day that the accident happened?
A. Yes sir.
Q. What do you know about there being on that boat, while you were working at it, a particular can that was supposed to contain kerosene? There was such a can, I think you have already stated, there was a gallon can?
A. Yes, was a gallon can.
Q. How was that marked, if anything?
A. There was marked on the side of the can "Kerosene" or "Coal oil." I think it was Coal oil marked on the can.
Q. "Coal oil" marked on it?
A. It was used only for that purpose.
Q. And where was that standing?
A. That was standing in front of the stove, underneath the bench.
Q. On the bench?
A. Underneath the bench, yes.
Q. Underneath the bench?
A. Yes, front of the stove, underneath the bench.
Q. You say underneath the bench?
A. Well, front of the stove, on the side of the bench there the stove was standing on, you see.
Q. The stove was standing on the bench?
A. The stove was standing on the bench, yes.
Q. And this can was standing beneath the bench?
A. Yes.
Q. Did you have the same can all the time there while you were there—the same can?
A. The same can.
Q. Used for that purpose?

A. Used for that purpose.

Q. Now, what can you say about seeing the can there this morning when this accident happened?

A. Yes, I saw the can that morning when I went on the boat.

Q. This same kerosene can?

A. The same kerosene can, yes.

Q. That you had always had there. Did you see who made the fire that morning for lunch, in the stove?

A. Isaac went down and made the fire.

Q. Isaac what?

A. Went down and made the fire.

Q. Isaac?

A. Yes.

Q. O, the witness who was just here?

A. Yes.

Q. You saw him go down and make the fire?

A. Yes.

Q. And about what time should you think that was?

A. Eleven o'clock.

Q. And had you had any meals on board the boat before
163 that Lunch?

A. No.

Q. Were you around the forecastle when he went down to make the fire there?

A. Yes, I just took the stairway, I was where the lever was for the rudder.

Q. And you stood right there?

A. Yes sir, I stood close to the hole.

Q. So you saw him when he made the fire?

A. Yes.

Q. Do you know whether he used any oil this morning, or not, or what he used in starting that fire?

A. I didn't see him use any oil at all.

Q. Did you see him use anything else?

A. He was oiling the engine and he was using waste to oil the engine, that is all I know.

Q. You didn't see whether he used the waste to start the fire with, did you?

A. No, I didn't see that.

Q. You didn't see that?

A. No.

Q. But you didn't see him use any oil?

A. I didn't see him use any oil, no.

Q. Now, where was your luncheon taken, where did you take your luncheon?

A. We ate it on the deck.

Q. About what time was that that you sat down to luncheon?

A. It was a quarter to twelve.

Q. A quarter to twelve?

A. Yes.

Q. The stove that you had in there, what kind of a stove was it, that you had to cook on?
A. It was a plate stove, just thin iron, you see.
Q. Sheet iron?
A. Yes, sheet iron, that is what you call it.
Q. How thick would it be, comparing the thickness with the iron that is in the ordinary stove pipe?
A. Just like the pipe, something like it.
Q. Just like a stove pipe?
A. Just like a stove pipe, exactly.
Q. Had you often made fires yourself in that stove while you were there those ten days before.
A. Yes, lots of times.
Q. How long have you been a fisherman?
A. I have been a fisherman for almost fourteen years.
Q. In these waters here, in Alaska waters here?
A. Six years.
Q. Six years?
A. Yes.
Q. During that time and before this ten days that you were working up here in this boat, had you frequently made fires in stoves of similar kind in similar boats that you had been working in, in the boats, in like stoves?
A. Yes, sure.
Q. You had made fires?
A. Yes.
Q. Did you notice whether or not when you burned wood in them, especially wood from boxes——
A. I know that sure that I use box wood, or any kind of wood, as soon as the fire is out the stove is cold.
Q. The stove is cold as soon as the fire is out?
A. Yes.
Q. Did you ever burn coal in those stoves?
A. No. You can't burn no coal in them stoves at all.
Q. Why not?
A. Because they are so thin they don't stand it.
Q. They don't stand it?
A. No.
Q. At this time, this day that you were on when he was hurt, and the ten days before that you had been on the boat—you were on it the day before, I understand?
A. No.
Q. But for the other time that you had been on this boat, state whether or not there at any time had been any coal on board that boat for use in that stove, or to use for any purpose?
A. No coal at all.
Q. No coal at all?
A. No.
Q. What was the usual and general way in which the fisherman who had to light the fire in these stoves, or light the fire, what was the

general and usual way, both those ten days and before, at other times, when you have been working in similar boats?

A. Using coal oil.

Q. Used the coal oil, pouring it on?

A. Pouring it on, yes, and light a match and put into that, that is all.

Q. Did you state who was the boss of the boat on this day when he was hurt?

166 A. Iver Stensland.

Q. He was in charge?

A. He was in charge.

Q. Did you hear anybody give plaintiff any orders to go down and make a fire in the stove after dinner, sometime after dinner after lunch?

A. They gave him order to go down.

Q. Who gave him the order?

A. Iver Stensland.

Q. Gave plaintiff the order to go down and——

A. Make fire and boil some water to wash the dishes with.

Q. And what time about was that, how long after you had sat down to lunch, about?

A. Two o'clock.

Q. Two o'clock, it was, about two o'clock. From the time that you had been having your lunch and up to that time what were you doing on board the boat?

A. We was running along the shore, hunting.

Q. Hunting?

A. Yes.

Q. When the plaintiff got the order from Stensland to go down did you see whether he went down, when he told him to go down and make the fire?

A. He went down and made the fire.

Q. He went down and made the fire. And did you see anybody else go down there?

A. Not then.

Q. Not then?

A. No.

Q. Well, how soon afterward?

167 A. When the explosion—a little before the explosion Isaac go down.

Q. Isaac Utness went down?

A. Yes, he was going down. As soon as he got down, the explosion happened right there.

Q. The explosion happened right there?

A. Yes.

Q. You didn't see how it happened?

A. I didn't see how it happened, no.

Q. But you knew there was an explosion?

A. I know there was a sudden explosion; it could not be anything else.

Q. What did you see and hear about it?

A. Well, see the flame coming out from the hole; that is all I see.
Q. Did you see the plaintiff?
A. Plenty of it, yes.
Q. No; Ole Sandanger?
A. I didn't see him when the explosion happened, but a second afterwards he came up, right up then.
Q. What condition was he then?
A. He was burning all over; you could not see his clothes for fire.
Q. What did he do after he came up?
A. Well, he was around there hollering for life preservers, and there was none on the boat; nor anything else to be found on the boat, only there was an anchor line laying, that was on the head of the boat. It was heavy—that was laying underneath the anchor, we couldn't do anything with that. He had to jump overboard. He was beside himself.

Q. He jumped overboard?
A. Yes, he was beside himself.

Q. Knowing what kind of fuel you had aboard that boat at the time of the accident, and at what time the dinner was cooked, and the time when plaintiff, Ole Sandanger, went down to start the fire, and knowing the stove that was there, could you state whether or not at that time it could be possible that the stove could be hot?
A. Impossible. The stove could not be hot at all. It was two hours afterwards.
Q. Two hours after the fire——
A. After the fire was on, yes.
Q. Had anyone of you gone down there after you started up to eat your lunch and up to the time he went away, had any one of you four been down?
A. No, I was not down there.
Q. Had any one of the others been down?
A. Isaac——
Q. Well, that was the time that he had gone down to start the fire, but before he went to start the fire had any of you four been down from the time that you sat down to eat lunch?
A. Not after we took our lunch, no.
Q. Well, did you go down there while you were eating your lunch, any one of you?
A. I wasn't.
Q. Well, did any of the others while you were eating lunch?
(No response.)
Q. Can't you answer that?
A. No, there was nobody went then when we were eating the lunch.

Q. Well, that is what we want to know. I will ask you to state whether during all the time you have been a fisherman in these waters for the last six years, it has been the general and usual custom to light the fire on board those fish boats with kerosene, has that been the usual custom?
A. Always. Use kerosene always.

Q. Always?
A. Yes.
Q. How many times have you, during the time you have been fishing in these waters—while on board a boat, how many times have you made fires with kerosene?
A. Must be thousands of times.
Q. And during your experience, have you ever seen an explosion caused by the use of kerosene in lighting a fire?
A. Never.

Cross-examination.

(Mr. Hadley:)

Q. If I understand you, you say that you had been on board this boat steadily for ten days prior to the accident?
A. Ten days before the accident, yes.
Q. Well, had the boat been in commission—
A. How?
Q. Was the boat in commission all that time?
A. No, it was not.
Q. It was not?
A. No.
Q. What were you doing aboard of it?
170 A. The boat was not in condition at all.
Q. Commission, I said.

Mr. Arctander: He didn't ask "condition," commission.

(Mr. Hadley:)

Q. Was it running back and forth?
A. When I was on board her?
Q. When you were on board of it, yes?
A. Well they were using it for towing there.
Q. Using it for towing?
A. Yes.
Q. For ten days, the time that you were on it?
A. Yes.
Q. What did it tow?
A. We were towing piling for the cannery.
Q. This same boat?
A. Same boat.
Q. Why was it you were not on the day before, then?
A. The day before what?
Q. The day before the accident. You said you were not on that day.
A. I was not on that day, no. I was in the cannery.
Q. This gallon can for kerosene was for the purpose of filling lanterns?
A. Lanterns, and for the stove.

Q. And was used for starting fire in the stove, too?
A. Yes.
Q. You say you filled the can yourself lots of times?
A. Yes, after Peterson told me which was which.
Q. After what?
A. After Peterson told me which was which of them two drums.
Q. When did he tell you?
A. He told me—it was the first time I think I went into the oil house.
Q. When was that?
A. It was in the spring, in—it was in February.
Q. Was it before this?
A. Why, certainly, yes.
Q. Now, what did you say was kept in the oil house at that time?
A. There was keeping kerosene and gasolene.
Q. At that time?
A. At that time what?
Q. Were they keeping gasolene there at that time, or later?
A. They keeping gasolene there all the time.
Q. It was there at that time?
A. Yes.
Q. What was it kept in?
A. It was kept in drums.
Q. What size drums?
A. Hundred gallon drums.
Q. What was the kerosene kept in?
A. On the same kind of a drum.
Q. Same size?
A. Same size.
Q. Did you ever hear of a hundred gallon kerosene drum?
A. Well, because, you know, they took the old drums over to Katalla and filled them up for kerosene, used same drums that way.
Q. Was there a fifty gallon drum?
A. There wasn't. There was in the cannery, but not in there.
Q. Not in there?
A. No.
Q. They were all hundred gallon drums?
A. Yes.
Q. What else was kept in the oil house?
A. There was cylinder oil.
Q. Cylinder oil?
A. Yes.
Q. You say that Peterson showed you which drum had the kerosene in?
A. Yes. He couldn't show me except—he didn't know it himself, he had to smell it to tell the difference himself.
Q. Was this inside of the oil house, or was it out on the dock?
A. That was in the oil house. He had that oil house just for that purpose, for oil in there, for keeping oil in, that is all.
Q. What time was this?

A. What?
Q. When?
A. That I asked him——

Mr. Arctander: That Peterson showed you.

(Mr. Hadley:)

Q. What day?
A. Well, that was—I could not say—tell you exactly, but I think it was on the 24th of February.
Q. 24th of February?
A. Yes, about that time.
Q. The names had been on the drums, hadn't they?
A. They have sometime, probably, but not then.

Q. Well, you didn't notice for sure whether they were on
173 or not, did you?

A. Well, I know it for sure. If there was, I didn't have to go over to Paterson and ask him; then I could tell difference, which was which, myself.

Q. How many times were you in that oil house before the day of the accident?
A. I was in quite a few times.
Q. How many times?
A. Well, I must have been in that about a dozen times.
Q. Eleven or a dozen times?
A. Yes.
Q. How did you get in there?
A. I got the key from John Peterson.
Q. From John Peterson?
A. Yes.
Q. Did he go in with you each time?
A. No.
Q. Just the first time?
A. He went in the first time. There was changing drums. When those drums was on, they put in some in the drums, and they were the same thing, and I was in there and I couldn't tell the difference at all. The only way I could tell was to take the top off and smell of them. That is the only time I could tell you.
Q. Isn't it a fact that they didn't put the gasoline in that oil house until the fishing season began?
A. They put oil in that house long before the fishing season started.
Q. The gasoline?

A. Gasolene, yes. They put them oil drums in there
174 when we first came up in the spring, in that oil house—a kerosene drum and a gasolene drum, and they were standing alongside of each other.

Q. Two of them?
A. Two of them, yes.
Q. You were not in the oil house on the day of the accident, were you?

A. How?
Q. You were not in the oil house on the day of the accident?
A. No.
Q. You don't know how they stood that day, do you?
A. O, the day before.
Q. What were you doing the day before in there?
A. Well, the drums was there. I was in the day before. The drums was there.
Q. What were you doing in there the day before?
A. I was working on the cannery and I was in there and got some lubricating oil.
Q. Some lubricating oil?
A. Yes.
Q. The day before?
A. Yes.
Q. Who let you in that day?
A. John. I got the key from John every time I went in there.
Q. From John Peterson?
A. Yes.
Q. Every time you went in you got the key from John Peterson?
A. Yes.
Q. The port engineer?
175 A. Yes.
Q. Every time you went in there did you take off the head of the drum and smell it?
A. That is all, yes. That is the only way I could tell difference. There was no difference on the drums.
Q. Hadn't the front of this drum been painted white?
A. Been painted. The name scratched off. There was changing drums. Sometimes they took the gasolene drum and filled it up with kerosene, and sometimes they filled the kerosene drum full with gasolene, a good many times.
Q. Where did they fill those drums?
A. They filled them at Katalla. Never painted them for the whole summer, and they never attend to it at all. Carelessness.
Q. Why didn't you tell them about it?
A. Well, I wasn't running the business.
Q. How do you know there were no life preservers aboard?
A. Because I know that for sure, was no life preservers. The first thing I looked, and when I first came on the boat, if there was any life preservers, and I says to Mr. Stensland, I says, "Why we couldn't have no life preservers?" And he says "Yes, it isn't necessary to take them along," he says.
Q. Did you look in the upper bunk to see if there were life preservers?
A. I looked all around. Yes, you bet I did. They wouldn't let us have no life preservers on the boat, is the trouble.
Q. What do you mean?
A. I said they wouldn't let us have no life preservers. When I

was running on the boat, we asked a good many times if he
176 don't want to give us any life preservers. He says, "No, it isn't necessary to take them aboard the boat," he says. So they would not let us have no life perservers.

Q. You say you knew there was an explosion because you saw the flame come through the hole and a second afterwards you saw the plaintiff rush up with his clothes burning?

A. Yes.

Q. Was there any sound?

A. Sound, yes I should say it was.

Q. How did it sound?

A. O, sound like you hear when you heard the blowing the hardest around the corner. Just like——

Q. Well, the plaintiff could not have found the life preservers if they had been inside, could he, he had to go up on deck?

A. How?

Q. The plaintiff could not find the life preserver, if it had been inside, could he?

A. No, he couldn't—if there was, but there was none.

Q. What difference would it have made?

A. There was great difference, that it would save him so much, that he would not burn half so much as he did if he had life preservers.

Q. Why?

A. Because they could give him a life preserver and he could jump over right away, but he was looking around there and took a little while looking for some.

Q. Wasn't there a plank pushed out to him?

A. A plank, a big plank there, and he jumped overboard
177 and everything was went in the hurry there and the boat was running full speed and before we throwed the plank in it was about fifty feet away from him, something like that.

Q. But he did get the plank?

A. He did get the plank after a while, yes. He swam to the plank.

(Witness excused.)

178 STATE OF WASHINGTON,
County of King, ss:

I, Earl E. Richards, a Notary Public in and for the State of Washington, residing at Seattle in said county, do hereby certify that:

The annexed and foregoing depositions of the witnesses Isaac Utness and John Jorgenson, on behalf of the plaintiff, were taken before me, and reduced to writing by myself, at Seattle, in said county and state, on the 4th day of February, 1918, in pursuance of the annexed stipulation.

That the above named witnesses, before examination, were by me duly sworn to testify the truth, the whole truth and nothing but the truth.

That the reading and signing of said depositions by the said wit-

nesses was expressly waived by the respective parties hereto, by their counsel.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal this 8th day of February, 1918.

[SEAL.] (Signed) EARL E. RICHARDS,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

179 STATE OF WASHINGTON,
County of King, ss:

I, Percy F. Thomas County Clerk of King County and ex-officio Clerk of the Superior Court of the State of Washington in and for King County, do hereby certify that the foregoing two documents entitled in cause No. 127113, Ole Sandanger v. Carlisle Packing Company, in the above entitled court and being marked, respectively, "Depositions of Andrew Lund, Louis Stenson, Ingwald Sandanger and Emanuel Olson, on behalf of plaintiff, taken at Seattle, Washington, before Earl E. Richards, Notary Public, and bearing the file mark of my office dated September 4, 1918; and "Depositions of Isaac Utness and John Jorgenson taken on behalf of plaintiff at Seattle, Washington, on the 4th day of February, 1918, before Earl E. Richards, Notary Public" and bearing file mark of my office dated September 4th, 1918; are the original depositions filed in said cause, that they were filed in my office on the dates marked thereon and stated hereinbefore, and are sent to the Supreme Court of the State of Washington by me pursuant to the praecipe for supplementary record on appeal filed in my office in said cause by the plaintiff, and that a full, true and correct transcript and copy of said praecipe is hereto annexed.

In Witness Whereof I have hereunto set my hand and affixed the seal of said court this 8th day of January, 1920.

PERCY F. THOMAS,
Clerk.

[SEAL.]

By A. N. OLSON,
Deputy.

180 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

Stipulation to Take Deposition of Nels Hawkinson, Witness on Behalf of Defendant.

It is hereby stipulated and agreed by and between Hadley & Hadley and Kerr & McCord, attorneys for the defendant in the above entitled action, and Arctander & Lysons, attorneys for plaintiff in the above entitled action, that inasmuch as Nels Hawkinson is a necessary and material witness for defendant in the above entitled action, and inasmuch as said witness is about to depart from the city of Seattle, King county, Washington, and will not return to said King county in time for the trial of said action, towit; that said witness is about to depart for the territory of Alaska.

Now therefore, it is hereby stipulated that the testimony and deposition of said witness be taken before Earl E. Richards, a notary public in and for the state of Washington, residing at Seattle, King County, Washington, at the office of Hadley & Hadley, in the Colman Building, in said city of Seattle on the 12th day of
181 March, 1918, at 3:00 o'clock P. M.; and

It is further stipuated and agreed that the testimony of said witness may be taken by said notary in shorthand and afterwards reduced by him into longhand, and that the reading of said deposition to said witness is hereby expressly waived, and that the parties further waive the signature of said witness to his said deposition; and

It is further stipulated and agreed by and between the parties that any and all objections to any questions propounded to said witness for any other reason than that of the form of the question may be interposed at the trial of said action without such objection being noted or entered at the time of taking said deposition, but that all objections to the form of the questions shall be deemed waived unless noted and entered at the time of taking said deposition; and

It is further stipulated and agreed by and between said parties, through their respective attorneys, that said deposition may be read at the trial of said action with the same force and effect as if the said witness were present and testified in open court as in said deposition set forth, unless it shall be made to appear to the court that at the time of the trial of said action the reason for taking said deposition
182 and for submitting the evidence of said witness by said deposition had then ceased; the parties further waive all formalities and formal defects in the taking or returning of this deposition, and especially consent and agree that the fact that said action is not

t at issue shall not in any manner effect the validity of taking said position.

The oath of the notary public is waived.

Dated this 12th day of March, 1918.

(Signed) ARCTANDER & LYSONS,
Attorneys for Plaintiff.
HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Defendant.

3 In the Superior Court of the State of Washington for King County.

No. —.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING CO., Defendant.

Be it remembered, that on the 12th day of March, 1918, at three clock p. m. pursuant to the attached stipulation between counsel r plaintiff and defendant, before the undersigned, a notary public and for the State of Washington, appeared John W. Arctander (of essrs Arctander & Lysons) counsel for plaintiff, and Mr. C. M. adley (of Messrs. Hadley & Hadley) and Mr. E. S. McCord (of essrs Kerr & McCord) counsel for defendant.

Whereupon the following proceedings were had:

4 NELS HAWKINSON, produced as a witness on behalf of defendant, having been first duly sworn by the notary to tell e truth, the whole truth, and nothing but the truth, testified as llows:

(Mr. C. M. Hadley:)

Q. What is your occupation, Mr. Hawkinson?
A. Superintendent of the Carlisle Packing Company.
Q. Superintendent of the plant?
A. Yes.
Q. You are in charge of the entire cannery at Cordova?
A. Yes, acting as manager for that plant, full charge of operation.
Q. Were you superintendent during the season of 1917?
A. Yes.
Q. Were you at Cordova on or about March 7, 1917?
A. Yes.
Q. Were you familiar with the storage of the oil and gasoline ed by the defendant on its boats at that time?
A. Yes, I was.
Q. Will you please state where the gasoline was kept, where the rosene was kept, and what the practice was with regard to same?

A. The coal oil, Pearl oil, or Kerosene, is the same thing, it was kept in this oil house. That is what we had on tap, otherwise, it was on the dock and we rolled in a barrel or drum, as we call it, to use there, put a tap on it, see, and used from it, in this oil house on the dock.

Q. You mean you kept the kerosene in a drum in the oil house on the dock?

185 A. Yes.

Q. As you used it?

A. As we used it, yes, and when that got empty, then we would take that out and put another one in.

Q. What size drum?

A. Most of them are 50-gallon drums; most all the coal oil drums was 50 gallons.

Q. Were there any distinguishing marks on those drums to indicate what they were?

A. Yes, they are all marked and painted, painted white ends and marked, most of them marked "Pearl Oil" and some of them marked "Coal Oil" on the ends.

Q. But they are all painted white?

A. White on the ends, yes.

Q. And that always indicates kerosene?

A. Yes.

Q. Was there such a drum in the oil house at the time stated?

A. Yes, there was.

Q. Were there any other drums in the oil house at that time?

A. No, not at that time.

Q. You know, of your own knowledge, the contents at that time?

A. Yes, I do.

Q. What else was in the oil house?

A. Well, any oil we kept, there is two or three cases of gasoline kept over from the year before, and there was paints there, different paints, and turpentine, putty, okum and pitch and some red paint in a barrel.

Q. By cases of gasoline, what do you mean?

A. Two 5-gallon cans in each case.

186 Q. In a wooden box?

A. A wooden box, yes, covered.

Q. Was there any other gasoline or distillate in the oil house?

A. Not at that time.

Q. Any drums in the oil house containing anything but kerosene?

A. No.

Q. Had there been any gasoline in the oil house that season up to this time?

A. No, not in drums.

Q. Well, do you know who drew the kerosene that was used aboard the boat at the time of the accident on March 7th?

A. No, I don't.

Q. You don't know anything about it, of your own knowledge?

A. No.

Q. You stated that the kerosene drums all had the ends painted white to distinguish them as such?
A. Yes.
Q. Did the men about the cannery have instructions to that effect?
A. Well, instructions don't go to the men, they go to the foreman in charge, you see?
Q. Well, who was the foreman in charge?
A. Ivar Stensland was the foreman.
Q. You know that Stensland was instructed that the drums with the white ends contained kerosene, do you?
A. Yes, and it is very plain, plain for everybody.
Q. You stated, also, that the drums had printed on them either "Kerosene" or "Pearl Oil"?
187 A. Yes.

Cross-examination.

(Mr. Arctander:)

Q. Mr. Hawkinson, at the time of this accident, the 7th of March, how many drums were there in the oil house?
A. Just the one.
Q. If you know?
A. One drum.
Q. Only one drum?
A. One drum, yes.
Q. How many had there been in there for, say, a month before?
A. Well, we only have one at the time, of coal oil.
Q. That is of any kind?
A. Yes.
Q. Drums, I mean in this oil house?
A. Yes, just the one.
Q. During the month before the accident, was there only one drum?
A. Yes.
Q. Were the drums, whatever they contained, standing up in the oil house, or lying down?
A. Lying down.
Q. On what?
A. We have a bench made.
Q. A bench?
A. Yes.
Q. A rack?
188 A. A rack, yes.
Q. A rack or bench. And——
A. We have—if I may tell more about it—we have creosote and tar, too. I forgot to mention that in there. We laid them on the same racks, as we call them.
Q. They are not in drums are they?
A. No, they were in barrels.
Q. These drums are black, they are iron, aren't they?

A. The 50-gallons are in galvanized——
Q. Galvanized?
A. Most of them are galvanized.
Q. The 50-gallon?
A. Yes. Of course there are some black ones too, they come both ways—both ways.
Q. The black ones are made out of iron, are they?
A. Yes.
Q. Those drums?
A. They are all made out of iron.
Q. All made out of iron?
A. Yes, or the 50-gallon and 100-gallon, and then the 50-gallon come both black and galvanized.
Q. And the 100-gallons, how do they come?
A. They come black.
Q. Black iron?
A. Yes.
Q. And they are not quite square, I understand, they are a little longer than they are wide?
A. Yes.
Q. And they are laid down on the long side?
A. Yes.
189 Q. With the ends—what you call the ends, they are on each end of the long end of it——
A. Yes.
Q. —or of the long part of the drum, And as they are laid down in this way on the rack, there is an opening, is there not, or a place that you can get into it, in the upper part, the one that lays up—the part of it that is towards the roof, I mean?
A. There is a bung.
Q. Yes.
A. We have to open up to let air in.
Q. That is a sort of iron plug?
A. Yes.
Q. Which has a screw in it so that you can screw it up?
A. Yes, and you just leave that a little bit loose, just unscrewed partly, so that it will let air in.
Q. But it can be unscrewed entirely?
A. Yes.
Q. And a pump put into it by which you pump out the oil?
A. Yes.
Q. And that was the way you got out the oil from the drums there, was it not—by pumping it out from this place up in the top?
A. Not those drums inside.
Q. Not those drums inside?
A. No.
Q. You had a pump in there, inside?
A. Later in the season we did.
Q. Did you have one at this time?
A. No, not at this time, no.

Q. Are you sure of that?
A. Yes.
Q. Were you the one who gave Stensland directions in regard to painting the ends of these drums white?
A. These are painted in Seattle.
Q. They are painted in Seattle?
A. Yes.
Q. Well, then, you didn't hear anybody give Stensland any instructions about it, did you?
A. There is no instructions about it.
Q. Just answer that question. You didn't hear anybody give him instructions, and you didn't give him any?
A. No, not about painting the drums——
Q. No.
A. —the white. They are all painted in Seattle.
Q. Yes. What did you mean, then, by saying that you knew Stensland was instructed that the ends of the kerosene barrel should be painted white?
A. No, just instructed as to use—as to the use of oil and where the the oil was and so on, that is all.
Q. You meant that he knew——
A. Yes.
Q. —those drums that contained kerosene would be painted white?
A. Yes.
Q. That is what you meant by it, was it?
A. Yes.
Q. You are still in the employ of the defendant?
A. Yes.
Q. You still have the same position——
A. The same position.
Q. —as you had in 1916?
A. Yes.
Q. And you are going up there now, I suppose, now, to Cordova?
A. Yes, now.

(Witness excused.)

STATE OF WASHINGTON,
County of King, ss:

I, Earl E. Richards, a Notary Public in and for the state of Washington, residing at Seattle in said county, do hereby certify that:

The annexed and foregoing deposition of the witness Nels Hawkinson, on behalf of the defendant, was taken before me and reduced to writing by myself at Seattle, in said county and state, on March 12, 1918, in pursuance of the annexed stipulation.

That the above named witness, before examination, was by me duly sworn to testify the truth, the whole truth and nothing but the truth.

That the reading and signing of said deposition by the witness was expressly waived by the respective parties hereto.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal this 20th day of March, 1918.

[SEAL.] (Signed) EARL E. RICHARDS,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

193 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, Defendant.

Stipulation to Take Deposition.

It is hereby stipulated and agreed by and between Arctander & Lysons, attorneys for the plaintiff, and Hadley & Hadley and Kerr & McCord, attorneys for defendant in the above entitled action, that the depositions of Charles Foyston, Conrad Espeland, Jens Foldvick and Hans D. Sorvik, witnesses on behalf of defendant, and also that the depositions of any other witnesses who may be produced by the defendant at the time and place herein mentioned, may be taken on oral examination before Edward F. Medley, a notary public in and for the Territory of Alaska, residing at Cordova, Alaska, or before any other notary public in and for said territory, at Room No. 1, Adams Building, Cordova, Alaska, the taking of said depositions to be commenced at 10.00 o'clock a. m. on the 7th day of August 1918, and continued from day to day until finished; that counsel
194 for the respective parties may be present and examine, and cross examine, said witnesses; that said depositions may be taken in shorthand and transcribed under the direction of the notary public before whom same are taken; and when so finished, shall be certified by such notary and returned to this Court.

All formalities as to signing, certifying and returning said depositions are hereby waived, and said depositions may be read on the trial of this action subject to the same objections, and none other, as to materiality, competency and relevancy, as though the witnesses were present in open court and testifying; provided, however, that if it appears from said depositions that plaintiff has not cross-examined said witnesses at said hearing, he may raise objection at the trial to the form of any question propounded.

Dated this 30 day of July, 1918.

(Signed) ARCTANDER & LYSONS,
Attorneys for Plaintiff.
HADLEY & HADLEY,
KERR & McCORD,
Attorneys for Defendant.

195 In the Superior Court for the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Oath of Referee.

I, A. J. Adams, of Cordova, in the Territory of Alaska, a notary public duly commissioned and sworn under the laws of the Territory of Alaska, having been by stipulation selected to act in the above entitled case, to take the depositions of witnesses on behalf of the defendant, and to certify said depositions and return them when so certified to the Clerk of the above named court, do solemnly swear that I will support and defend the Constitution of the United States of America, and will perform my duties as Commissioner to take said depositions well and truly, to the best of my ability, so help me God.

(Signed) A. J. ADAMS.

Subscribed and sworn to before me this 9th day of August, 1918.

[SEAL.] (Signed) EDWARD F. MEDLEY,
Notary Public for Alaska.

My commission expires October 11, 1921.

196 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

To the above named Superior Court, and pursuant to a stipulation entered into by the attorneys of the plaintiff and defendant in the above entitled action, made on the 30th day of July, 1918, I, the undersigned Notary Public, respectfully report that having taken the oath required, which oath is hereby annexed, and made a part of this report, I commenced taking the testimony of the witnesses offered in behalf of the defendant at Room No. 1, Adams Building, Cordova, Alaska, at 10 o'clock A. M. the 7th day of August, 1918, and continued taking said testimony from day to day until 4 o'clock P. M. on the 13th day of August, 1918.

During the taking of said testimony Edward F. Medley Esq., appeared for the defendant, and asked the oral interrogatories as appears by the testimony hereto annexed, the plaintiff not appearing either in person or by attorney.

The testimony taken by me is hereto annexed and made a part of this report, and it was reduced to writing by Zella O. Hayes, a disinterested person, in my presence and under my direction.

Dated at Cordova, Alaska, this 13th day of August, 1918.

[SEAL.] (Signed) A. J. ADAMS,
Notary Public.

197 HANS D. SORVICK was sworn to tell the truth, the whole truth and nothing but the truth, and testified as follows:

1 Q. State your name, age and residence?

A. Hans D. Sorvick, age twenty-nine, residence 1514 33 W Seattle, Wash.

2 Q. What is your occupation?

A. Cannery foreman.

3 Q. How long have you been in the business of cannery foreman.

A. Nine years.

4 Q. Give the name of your present employer, and its place of business?

A. Carlisle Packing Company, Cordova, Alaska.

5 Q. How long have you been employed at Cordova?

A. This is the third season.

6 Q. How many months of each year have you been employed in Cordova during the past three years?

A. Eight months of each year.

7 Q. State whether or not you are familiar with the coaloil drums used at the cannery of the Carlisle Packing Co., in Cordova, Alaska?

A. Yes.

8 Q. How are they designated as to contents?

A. The coal oil drums are painted white and marked pearl oil.

9 Q. What is the character of the letters?

A. Black letters on a white end.

10 Q. State whether or not they can be plainly read?

A. Yes, easily, plainly read.

11 Q. Who was kept in the blacksmith's shop at the cannery on or around March 7, 1917?

A. The blacksmith's name was Jorgen Thompson.

12 Q. Who was the blacksmith's helper at that time?

A. It was Emmanuel Olson.

198 13 Q. When did Olson reach the cannery to go to work?

A. About Feb. 12, 1917.

14 Q. When did you reach the cannery?

A. About Feb. 22, 1917.

15 Q. State whether or not as cannery foreman Emmanuel Olson was employed under and worked for you?

A. Yes.

16 Q. How long did Olson work in the blacksmith shop after you reached the cannery last year?
A. Not longer than a week if that long.
17 Q. State whether or not as cannery foreman for nine years you have had opportunity to observe methods of storing oils and gasoline in canneries?
A. Yes, ample opportunity.
18 Q. State whether or not you are familiar with the methods used for storing oils and gasoline in the Carlisle Canning Company during the year 1917?
A. Yes.
19 Q. Give your opinion of that method with regards to the prudence and carefulness thereof?
A. I think it is above that employed at canneries as to carefulness in smaller canneries. It is left more or less to men to help themselves, but at this cannery they keep a man and have a man to take care of it and handle it whose business it is to take care of the disposition of the coal oil and gasoline, and, furthermore the coal oil was kept in the oil house, and to my knowledge no gasoline was kept in the oil house at that time.
20 Q. What time?
A. During February and March last year.
21 Q. Can you state how the oil was taken from the coal oil drum, if so, describe the method?
A. The coal oil in the oil house was taken with a faucet.

(Signed) HANS D. FORVICK.

199 CHAS. FOYSTON was sworn to tell the truth, the whole truth, and nothing but the truth and testified as follows:

1 Q. State your name, age and resident?
A. Chas. Foyston, age thirty-four, residence, Cordova, Alaska.
2 Q. What is your occupation?
A. Clerk.
3 Q. By whom are you employed?
A. Copper River and Northwestern Ry.
4 Q. By whom employed during the year 1917—the first six or seven months?
A. The first six or seven months by the Carlisle Packing Co.
5 Q. Where were you working then?
A. I was working in the store.
6 Q. Where?
A. At the Carlisle Packing Co. plant, Cordova.
7 Q. State whether or not you remember about the time Mr. Sandanger had his accident, and when it was?
A. About March 7, 1917.
8 Q. At that time how many men were employed approximately in and around the cannery?
A. About 100.
9 Q. Were they around there most of the time?

A. Probably, they were divided between the cannery and the shipyards, around the bay.

10 Q. Did you know Sandanger?

A. Yes sir.

11 Q. State whether or not your duties had anything to do with the custody of gasoline and various other oils?

A. I was supposed when boats came in to deliver the oil and gasoline, and I was the only person.

12 Q. What time was that, around March 7 at the time of the accident?

200 A. Yes, and I was the only one outside of Mr. Hawkinson who had access to the oil house.

13 Q. State the procedure when anybody came in and wanted oil or gasoline?

A. They came to the store, and I would take the key and take them up to the oil house, and give them their oil.

14 Q. State whether or not there was anybody else employed at the cannery who went to the oil house more often than you?

A. No, I was practically the only one who went to the oil house to any extent.

15 Q. Describe the condition inside of the oil house with relation to the door, the position of the drums of oil and gasoline and the light in the oil house?

A. Entering from the door at the side of the building, the oil was arrayed on a rack at the back side of the building with the ends facing the door. On the right was an extra heavy lubricating oil barrel, next was a medium heavy oil barrel. The next was a 50 gallon coal oil drum with a faucet, the next was a barrel of pine tar, and beside that was a barrel of cre-sote, and the last barrel on the left was coal tar. There was a window at the left end of the building.

16 Q. State whether or not there was any gasoline stored in the oil house, and if not, where it was kept?

A. Previous to the Sandanger accident there had been no gasoline kept in the oil house.

17 Q. Where had the gasoline been kept?

A. Just outside the platform between the oil house and the China house.

18 Q. State about when, with reference to the Sandanger accident, gasoline was kept in the oil house?

A. Not before I left to go to the Canyon which was about three weeks later.

201 19 Q. State what marks if any were on these drums in the oil house?

A. The coal oil drum was marked at the end in black letters about four inches high and marked plainly. The other barrels were marked in the same way.

20 Q. In what manner were these marks put on the end of the drums?

A. Stencilled.

21 Q. What color was the end of the drums painted?

A. The coal oil drum was painted white, and the others were red. They all had black lettering, stencilled letters.

22 Q. How high was the lettering?

A. The lettering on the coal oil drum was about four inches high—the lettering on the other drums was about three inches high.

23 Q. Give the size of the drums?

A. 50 gallons.

24 Q. All of them?

A. The coal oil was a 50 gal. drum, and the others were of about 50 gal. capacity.

25 Q. Describe the manner used to remove oil or kerosene from the drums or barrels?

A. Oil was removed from the coal oil drums by a faucet, and also the lubricating oil was removed by means of a faucet.

26 Q. How about the others?

A. One stood open with the head bursted in.

27 Q. State whether or not a pump was used on any of these barrels to remove the contents?

A. No.

28 Q. State whether or not any other manner of working the key to the oil house was entered into while you had charge of the store room, and what that manner was if any?

A. Not while I remained there.

202 29 Q. Can you state approximately the date you left there? there?

A. March 25, 1917.

30 Q. State whether or not you are familiar with both gasoline and coal oil, or kerosene so called?

A. Quite familiar.

31 Q. How would you tell them apart in the dark?

A. Both by smell and feeling.

32 Q. Explain that?

A. Gasoline feels cold and dry. Coal oil is warm and greasy, and there is a difference in the smell.

33 Q. State whether or not in your opinion the oil and the gasoline of the Carlisle Packing Company were carefully stored?

A. I consider they were very carefully stored.

34 Q. State whether or not kerosene or coal oil poured into a stove with hot coals or embers would explode?

A. Yes, it will.

(Signed) CHAS. FOYSTON,
Witness.

203 NICK LORENSON was sworn to tell the truth, the whole truth, and nothing but the truth and testified as follows:

1 Q. State your name, age and residence?

A. Name Nick Lorenson, age thirty-five, occupation foreman and residence Tacoma, Wash.

2 Q. How many months in each year do you fish for a living?

A. Five or six months out of a year.

3 Q. How many years have you been a fisherman?
A. In this country about six years.
4 Q. Before that?
A. Before that for ten or twelve years.
5 Q. What sort of fishing do you do?
A. In this country most of it is salmon fishing.
6 Q. What sort of fishing, was it where you attended nets or seine?
A. All kinds of fishing.
7 Q. State whether or not you are familiar with the method used by fishermen in carrying coal oil on the boats?
A. Yes.
8 Q. For what purpose is coal oil put on the boats?
A. For lighting.
9 Q. As an experienced fisherman, state whether or not you used coal oil to start fires in the stoves.
A. I did not. On the boats I used I was always the first one to get up in the morning and start the fires, and I have never used coal oil.
10 Q. State whether or not you consider it a reasonable, careful thing to do for a fisherman to start his fire with coal oil?
A. It is carelessness.
11 Q. Do you think they ought to start fires with coal oil?
204 A. I don't start fires with coal oil. My experience has been not to use coal oil in the stoves.
(Signed) NICK LORENSON.

205 JENS FOLDVIK was sworn to tell the truth, the whole truth, and nothing but the truth and testified as follows:

1 Q. State your name, age and residence?
A. Name, Jens Foldvik, age thirty-four, residence Poulsbo, Wash.
2 Q. Where do you work?
A. I work for the Carlisle Packing Co.
3 Q. Fisherman?
A. Yes, fisherman.
4 Q. What work did you do in the year 1917?
A. I was working in the boat shop for the Carlisle Packing Company?
5 Q. Where was this?
A. It was down on at the Carlisle Packing Co. plant in Cordova.
6 Q. When did you reach there last year?
A. I think it was the 8th of February we left Seattle, and reached here Feb. 12, 1917.
7 Q. State whether or not your work brought you around the oil house at the Carlisle Packing Co.
A. I was one of the helpers on the boats—we were fixing up the cabins and we used a lantern for a light. We had no other light.
8 Q. State whether or not you have been in the oil house of the Carlisle Packing Co.
A. I have been in the oil house.

9 Q. Can you state of your own knowledge whether these oil drums were marked and how they were marked?
A. Yes I can. The oil drums are painted white at the ends with black lettering.
10 Q. What does it say?
A. Pearl oil.
11 Q. How did they draw oil from this coal oil drum?
A. From a faucet.
206 11 Q. Have you worked around the oil house, and if so state what your work consisted of?
A. I never worked around the oil house.
12 Q. You worked there once then?
A. Just by helping them roll the coal oil up on the platform.

(Signed) JENS FOLDVIK.

207 Dr. W. W. COUNCIL was sworn to tell the truth, the whole truth, and nothing but the truth and testified as follows:

1 Q. State your name, age, residence and occupation?
A. Name Walter Wooten Council, age thirty-six, residence Cordova, Alaska, and occupation Physician and Surgeon.
2 Q. Do you know the plaintiff in the case, Ollie Sandanger?
A. I do.
3 Q. State whether or not he has been under your care and attention for injuries, and what those injuries were?
A. Yes, he was burned.
4 Q. State whether or not he was confined in your hospital in Cordova?
A. He was.
5 Q. On what date did you first treat him?
A. March 7, 1917. He came into the hospital at 3.15 P. M.
6 Q. State how long before that his accident occurred?
A. From his story about an hour and a half maybe two hours.

(Signed) W. W. COUNCIL, M. D.,
Witness.

208 Filed in Supreme Court of Washington Jun. 13, 1919. C. S. Reinhart, Clerk. F. S. G.

15407.

OLE SANDANGER

v.

CARLISLE PACKING CO., a Corporation.

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209 In the Superior Court of the State of Washington in and for the County of King.

No. 127,113.

OLE SANDANGER, Plaintiff,

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Stipulation to Take Depositions.

It is hereby stipulated and agreed by and between Hadley & Hadley and Kerr & McCord, attorneys for the defendant in the above entitled action, and Arctander & Lysons, attorneys for plaintiff in the above entitled action, that inasmuch as John Peterson and Ivar N. Stensland are necessary and material witnesses for defendant in the above entitled action, and inasmuch as both of said witnesses are about to depart from the city of Seattle, King County, and will not return to said King county in time for the trial of said action, to wit; that said witnesses are about to depart for the territory of Alaska.

Now therefore, it is hereby stipulated that the testimony and depositions of both of said witnesses be taken before Earl E. Richards, a notary public in and for the state of Washington, residing at Seattle, King county, Washington, at the office of Hadley &

Hadley, in the Colman Building, in said city of Seattle on this 14th day of February, 1918, at 2:00 o'clock P. M., or as soon thereafter as possible, and

It is further stipulated and agreed that the testimony of said witnesses may be taken by the notary in shorthand and afterwards reduced by him into longhand, and that the reading of said depositions to said witnesses, and each of them, is hereby expressly waived, and that the parties further waive the signature of each of said witnesses to their said depositions; and

It is further stipulated and agreed by and between the parties that any and all objections to any questions propounded to said witnesses for any other reason than that of the form of the question may be interposed at the trial of said action without such objection being noted or entered at the time of the taking of said depositions, but that all objections to the form of the questions shall be deemed waived unless noted and entered at the time of the taking of said depositions; and

It is further stipulated and agreed by and between said parties, through their respective attorneys, that said depositions may be read at the trial of said action with the same force and effect as if the said witnesses were present and testified in open court as in said depositions set forth, unless it shall be made to appear to the court that at the time of the trial of said action the reason for taking said depositions and for submitting the evidence of said witnesses by said depositions had then ceased; the parties further waive all formalities and formal defects in the taking or returning of these depositions, and especially consent and agree that the fact that said action is not yet at issue shall not in any manner effect the validity of taking said depositions.

The oath of the notary public is waived.

Dated this 14th day of February, 1918.

(S-gned) ARCTANDER & LYONS,
Attorneys for Plaintiff.
HADLEY & HADLEY.
KERR & McCORD,
Attorneys for Defendant.

In the Superior Court of the State of Washington for King County.

No. —.

OLE SANDANGER, Plaintiff.

v.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Be it remembered, that on the 14th day of February, 1918, at two o'clock P. M. pursuant to the attached stipulation between counsel for plaintiff and defendant, before the undersigned, a notary public

in and for the state of Washington, appeared John W. Arctander (of Messrs. Arctander & Lysons) counsel for plaintiff, and Messrs Hadley & Hadley and Mr. E. S. McCord (of Messrs. Kerr & McCord) counsel for defendant.

Whereupon the following proceedings were had:

213 JOHN PETERSON, produced as a witness on behalf of defendant, having been first duly sworn by the notary to tell the truth, the whole truth and nothing but the truth, testified as follows:

(Mr. McCord:)

Q. State your name and residence?
A. John Peterson.
Q. Where do you live, Mr. Peterson?
A. In Seattle, at the present time.
Q. Where were you working during the year 1917?
A. Carlisle Packing Company, Cordova.
Q. Alaska?
A. Alaska.
Q. How long have you worked for that company?
A. Seven years.
Q. Is it your custom to come down in the fall of the year and go back in the spring?
A. Yes. No, not——
Q. What?
A. This spring.
Q. When did you come down from Alaska?
A. I came down the 26th of October.
Q. And when did you go up there?
A. The 5th of April.
Q. 5th of what?
A. 5th of April.
Q. 1916. You did not come down in the fall of 1916?
A. No, I stayed up there.
Q. You stayed there during the winter?
A. Yes.

214 Q. What were your duties along about March, 1917, in the employ of the Carlisle Packing Co.?
A. Port Engineer.
Q. What were those duties?
A. Look after gas engines, boats, repair work.
Q. What?
A. Repair work, machinery.
Q. Did you have anything to do with seeing that the boats were properly equipped?
A. No, not except the machinery.
Q. You had nothing to do with seeing as to the supply of food and oil and things of that sort, or did you?
A. No.

Q. Were your duties on the dock, too?
A. At the dock and in the machine shop.
Q. Do you know where the oil room was located at the Carlisle Packing Company, in March, 1917?
A. Yes.
Q. Where was it?
A. On the dock.
Q. Was it in a building by itself, or connected with some other building?
A. No, by itself.
Q. What size building was it?
A. 15x25 just about.
Q. On the 5th day of March, 1917, state what was stored in this oil room, what sort of oil?
A. It was coal oil.
Q. What else?
A. Paint.

(Mr. Aretander:

Q. What?
A. Paint.

(Mr. McCord:)

Q. What else?
A. And putty and o-kum—no, that is wrong—did I mention coal oil?
Q. Yes.
A. Coal oil and——
Q. Was there any gasolene?
A. Gasolene?
Q. In what was the gasolene stored?
A. In cases.
Q. What do you mean by cases?
A. Five gallon cases, two cans in a case.
Q. Tin cans?
A. Tin cans.

Mr. Hadley: Five gallon cans?
A. Yes.

(Mr. McCord:)

Q. Were they crated?
A. Crated, yes.
Q. Was there any gasoline in this oil room, in drums?
A. No, not at the time.
Q. What was the coal oil or kerosene stored in, what sort of tanks?
A. Fifty gallon drums.
Q. How were they painted?
A. White on the ends, both ends.

Q. What?
A. Painted white.
Q. White?
A. On both ends.
Q. On the butt ends.
216 A. Both ends.
Q. How about the sides, was all of it painted——
A. Black.
Q. Black. White ends.
A. White, both ends, and black in the center.
Q. How did you get the oil out of these drums, how was it taken out?
A. By a faucet—oil faucet.
Q. Did you have any gasoline or did the company have any gasolene stored in drums in this building?
A. No, not at the time.
Q. Did you have any stored anywhere in drums at that time, about the 5th of March?
A. No.
Q. How?
A. At the dock.
Q. Yes. Where were the gasolene drums kept?
A. On the dock outside of the oil house, between the oil house and the China house, the Oriental house they call it.
Q. Were the gasolene tanks or drums painted with any color?
A. Painted red, both ends.
Q. How were the sides?
A. No paint.
Q. Referring again to kerosene drums, you say they were fifty gallon drums?
A. Fifty gallon drums.
Q. Was there any name marked on them, were the words "Coal oil" or "Kerosene" marked on them?
A. They were marked "Coal oil."
217 Q. "Coal oil." And on the gasolene tanks, were they marked in any way?
A. Marked "Gasolene" on the end and on the side.
Q. Was the condition that you have just stated as to the contents of the oil room the same on the 5th, 6th and 7th of March?
A. Yes.
Q. How long did it continue that way? What was your custom as to the contents—what was the custom of the company in regard to the keeping of the coal oil in the manner you have stated in this oil room, did that condition prevail at all times, I mean?
A. Yes.
Q. Had you had any occasion to withdraw any coal oil from this drum with the faucet in it, situated in the oil room, about the 7th of March, 6th of March, somewhere along there?
A. Yes.
Q. What was that occasion? State the facts about it. When did you do it? When did you take any oil from this drum?

A. I took it about the first of the month, first of March.
Q. For what purpose?
A. For lamps for my house.
Q. How many drums of coal oil were there about the 5th, 6th or 7th of March, in this oil house?
A. One.
Q. Just one. How long did that remain there before it was refilled?
A. O, about three weeks. We don't refill it.
Q. What is it?
A. We don't refill it.
Q. What do you do, what do you do when it runs out?
A. Take a new one.
Q. Was there plenty of oil in it on the 5th, 6th or 7th of March, plenty of coal oil in this drum on the 5th, 6th, and 7th of March, 1917?
A. Yes.
Q. How long did a fifty gallon drum of kerosene last you at that season of the year?
A. About three weeks.
Q. Where were those drums filled with kerosene, I mean the kerosene drums?
A. In Seattle.
Q. When were they brought up there—what did you do with them when they got up there, those that you did not put in the oil house?
A. Stored them away in the dock.
Q. In the dock. And then you would put a new one in—when the one was used up, you would replace it with another drum?
A. Yes.
Q. And marked the same way, was it?
A. All the same way.
Q. Now, as to your gasolene, where did you get your gasolene that you used at about this time and at all times during the year 1917?
A. At the time, in cases, in cans, five gallon cans.
Q. Where did you get your gasoline?
A. Seattle.
Q. Did you get any from Cordova during the year?
A. Yes.
Q. How would you get that, how would that be brought over?
A. In drums.
Q. What size drums?
A. 110-gallon drums.
Q. Where did you get this gasoline?
A. In Katalla, Alaska.
Q. How far is that from Cordova?
A. O, about one hundred and thirty miles.
Q. Did you get any drums from any other source than Katalla?
A. No.
Q. (Continuing:) —of gasolene?

A. No.

Q. Did you get any coal oil at Katalla?

A. No.

Q. How could you determine whether a drum contained gasoline or coal oil, how could you find out whether a drum contained coal oil or gasolene? I say, how would you discover?

A. They were marked.

Q. They were marked. Was there any way to take the covers off of these drums?

A. Yes.

Q. Were they loose or fastened tight?

A. They were fastened tight.

Q. How were they on the 5th, 6th and 7th of March, 1917? about that time, were they fastened or loose?

A. Fastened.

Q. And you got it out through the faucet?

220 A. Through the faucet.

Q. You could easily distinguish gasolene from coal oil from the smell, if it was taken out of the faucet, couldn't you?

A. Yes.

Q. What is the difference, do you know, or are you able to explain it, I mean?

A. Yes.

Q. How, what is the difference?

A. Put some in your hand, gasoline will dry up right off.

Q. I say, could you tell from the smell?

A. Yes.

Q. There is a difference in the smell, is there?

A. A whole lot of difference.

Q. Could you tell the difference in the dark, from the smell alone?

A. Yes.

Q. Anyone could, could they, anyone could tell the difference by the smell?

A. Yes.

Q. Who kept the key to this oil house?

A. The blacksmith, in the blacksmith shop.

Q. Did you ever go into the oil room to get or take the tops off to see which was gasolene and which was kerosene, with Mr. Jorgenson?

A. No.

Q. Did you ever see Mr. Jorgenson in the oil room at all, that you know of?

A. Yes.

Q. Did you ever see him taking oil out of the kerosene drum?

221 A. No.

Q. Did you ever see him taking the tops off, to determine whether there was gasolene or kerosene in it?

A. No.

Q. Was there ever at any time in this oil room a koresene drum that was not marked with the ends painted white and the name on it?

A. No.
Q. And the name "kerosene" on it, I mean. And you never saw ny, there were never any drums there unmarked, were there?
A. No.
Q. In the oil that you say you took out of the kerosene drum for amily use, did you have any trouble with it?
A. No.
Q. What was it?
A. Coal oil.
Q. Do you know the witness, Mr. Isaac Utness, who testified for he plaintiff the other day—do you know him?
A. Yes.
Q. Did you know him about the 7th of March, 1917?
A. Yes.
Q. How long had you known him?
A. Four years.
Q. After the accident and on the day of the accident, on the 7th f March, 1917, did you have any conversation with Mr. Utness in gard to the accident to this plaintiff?
A. Yes.
Q. Where did that occur?
A. In the evening.
Q. I say where?
A. At the cannery.
Q. On the dock?
A. On the dock.
Q. About what time in the day?
A. Five o'clock in the evening.
Q. Was anyone present besides you and him——
A. No.
Q. —that you remember of?
A. No. Not that I remember.
Q. Did Mr. Utness at that time state to you how the accident ccurred?
A. Yes.
Q. What did he tell you?
A. He said that after lunch, that Ole Sandanger was told by ensland——

(Counsel for plaintiff objected to this for the reason that no proper undation has been laid for impeaching testimony.)

Mr. McCord: At this time I would like for the record to show hat we request the counsel for the plaintiff to return Mr. Utness to he stand for further cross examination, so that we may lay the undation for the impeaching question. I would like the record to how that this case was only commenced a few weeks ago, and testiony has been taken for the accommodation of counsel and to exedite the litigation, hurriedly and without an opportunity to find ut what the facts were in regard to these impeaching questions, and hat we ask counsel now to bring his witness on the stand again so

that we may further cross examine him, we not being fully
223 advised at the time as to just the extent of his contradictory
statements, that is, statements made by the witness Utness inconsistent with and contradictory to the statements made by him upon the stand, touching the circumstances surrounding the accident, and the cause of it. I would like to ask counsel, now, if he will produce the witness Utness for further cross-examination?

Mr. Aretander: I will state, for the record, that Mr. Utness is beyond our reach and counsel's reach, I guess. He went away last week from the city, having gone into the government service, having enlisted, and on his way to the front, as I understand it. I know he has left the city.

Mr. McCord: Is it not a fact that he is at Vancouver, Washington, in the service of the government, in the production of spruce lumber? I am so advised.

Mr. Aretander: I do not know. I do not know anything about it. The last I know was when he said "Good-by" when we were here, and I was asking the plaintiff and he told me that he had gone away, I don't know where. I thought it was fair to make that point here that there was no foundation laid.

Mr. McCord: I want to know whether you will insist upon that objection at the trial, that the proper foundation was not laid. We could not know this.

Mr. Aretander: I won't say that now, counsel, but I am inclined to think that perhaps, I won't, because I have no disposition to be mean about it.

Mr. McCord: Well, it might mean a good deal. I don't know that the testimony that will be elicited, Judge, will be
224 so important, but I feel that you ought to tell us now whether you will or whether you won't, and not wait until the trial. Don't you think that would be fair?

Mr. Aretander: That is why I made my objection here now, so as to raise the point, but, when we hear what it is, I will tell you then.

Mr. McCord: All right.

(Mr. McCord:)

Q. Just then state, Mr. Peterson, what Mr. Utness said to you on the dock at five o'clock in the afternoon or evening of March 7, 1917, concerning the accident.

A. Utness said to me that after they had their lunch today, that Ole Sandanger was told by Ivar Stensland to go and wash the dishes, he went into the forecastle to heat the water, and Isaac Utness went down in the forecastle to oil the engine, and when he came down in the forecastle Ole Sandanger was holding the oil can in both hands and looking at the engine, and then the flare of flame flared up from the stove.

Q. He was holding the can in both hands you say, and what was he doing with the oil?

A. Pouring it into the stove.

Q. Did he say anything as to what was the matter with the engine, ly he was looking at it?
A. The engine was "missing" at the time.
Q. You have been on this vessel, have you?
A. Yes.
Q. Did Mr. Utness tell you where the plaintiff was standing at the time he was pouring the oil into the stove?
A. Yes.
Q. Where?
A. In front of the stove.
Q. Well, from his position in front of the stove, could he see engine without looking away from the stove?
A. No.
Q. Did you have any further conversation with Mr. Utness in gard to this matter, in the last few days?
A. Yes.
Q. Where was that?
A. On Pike street.
Q. When?
A. About two weeks ago.
Q. Did he state to you or did you call his attention to his con- sation with you in regard to the circumstances surrounding the ident?
A. Yes.
Q. Did you ask him if he remembered what he had told you out it?
A. Yes.
Q. Did you tell him what he had told you?
A. Yes.
Q. Did he deny it, or did he deny that he had told you that?
A. He didn't say anything.
Q. He didn't dispute it at all?
A. No.
Q. Did he say he remembered telling you about it the way you did it?
A. No.
Q. You didn't ask him about it?
A. No.
Q. You just told him about it and he didn't say whether had told you so or not?
A. No, didn't say a word.

Cross-examination.

(Mr. Arctander:)

Q. You are still working for the defendant, you are still working r the company?
A. Yes.
Q. —the Carlisle Packing Company. And expect to continue to ork for them this summer?

A. Yes.
Q. Expect to go up there now?
A. Yes.
Q. In the near future. You hold the position there with them, and did last year, of what is called port engineer, didn't you?
A. Last year.
Q. That is what your position is called—last year?
A. Yes.
Q. Last spring?
A. Last spring.
Q. In February and March?
A. Yes.
Q. You expect to go up to the same position, do you not?
A. No.
Q. What position are you going to hold with them now?
A. That is outside foreman.
Q. What?
227 A. Outside foreman.
Q. You have been promoted, it is a higher position, is it?
A. I don't know if it is higher or lower.
Q. Get more money for it?
A. That might be.

Mr. Arctander: That is all.

Mr. McCord: What about the testimony, Judge; you will waive it I suppose, will you?

Mr. Arctander: I will tell you, I would rather see if we can't make some arrangement, if we can get hold of him where he is and have the question asked him.

Mr. McCord: If you will get him back here, I won't ask you to waive it.

Mr. Arctander: I won't agree to get him back here.

Mr. McCord: If you will get him back here, I have no objection to it at all, but I don't want to be compelled to apply to the court for an order to bring him back, or else ask to exclude his whole testimony, and I don't think it is of sufficient importance for that.

Mr. Arctander: I suggest this—of course, the only thing I can do about it, except waiving any objection, would be that I would like to write to him and find out—giving him this evidence and find out whether or not he made any such statements and to have his affidavit taken, one way or the other, on it.

Mr. McCord: I have no objection to your doing that. I don't care whether he comes back or not.

Mr. Arctander: No, but if——

Mr. McCord: I don't think we would object if he made an affidavit.

228 Mr. Arctander: If I could get it out in the form of an affidavit there is not the big expense of taking a deposition. We would not need to go down there. But this case won't come up

for a month or two, anyhow, and I will write at once and find out where he is.

Mr. McCord: All right then, we will not take any steps until we hear from you.

Mr. Aretander: No. All right, then I can let you know then.

Mr. McCord: You just let Mr. Hadley know.

Mr. Aretander: Yes.

Mr. McCord: Well, that is all we have today.

The hearing was here continued subject to the call of the notary.

229 Seattle, Wash.,

Feb. 26, 1918—10 o'clock a. m.

Continuation of proceedings pursuant to adjournment.

Present: Same as at former hearing.

IVAR N. STENSLAND, produced as a witness on behalf of defendant, having been first duly sworn by the notary to tell the truth, the whole truth, and nothing but the truth, testified as follows:

(Mr. McCord:)

Q. What is your name?

A. Ivar N. Stensland.

Q. What nationality are you?

A. Well, sir, I am an American, Norwegian descent.

Q. Native born American?

A. Native born American, yes sir.

Q. Where do you reside permanently?

A. Well, sir, I am residing in Alaska; about nine or ten months out of the year I am in Alaska.

Q. Where is your home down here?

A. My folks and what I call my home has been Portland—Gresham, Oregon.

Q. In the employ of what company are you now?

A. Carlisle Packing Company.

Q. How long have you been employed by the Carlisle Packing Company?

A. Since January 10, 1916.

Q. Were you employed by that company along about March 7, 1916——

230 A. Yes sir.

Q. —1917?

A. 1917.

Q. And how long prior to that time?

A. February.

Q. And how long afterwards?

A. Until November.

Q. And you were engaged in working for them where at that time?

A. At Cordova.

Q. Alaska?

A. Yes sir, Cordova, Alaska.

Q. In what capacity were you engaged by that company at that time?

A. As outside foreman.

Q. What were the duties of outside forman?

A. Well, I was to have charge of the general construction work of all kinds outside of the plant and around the plant.

Q. Well, did you have anything to do with fish traps?

A. Yes sir, fish traps and fish boats and of the equipment.

Q. And the operation of boats?

A. Yes sir.

Q. Are you acquainted with the plaintiff in this action?

A. Yes sir.

Q. What is his name?

A. Ole Sandanger.

Q. And by whom was he employed on or about the 7th of March?

A. By the Carlisle Packing Company.

231 Q. On the morning of the 7th of March, 1917, I will ask you to state what you did, in the presence of Mr. Sandanger, the plaintiff, just state what you did that day?

A. In the morning of the 7th of March we got orders from the Carlisle Packing Company to go out and look for some sand for building purposes, concrete work, and I was detailed in charge of the party to go after the sand, and I got with me Ole Sandanger and John Jorgenson and Isaac Utness, and we got ready to leave Cordova at eight o'clock.

Q. When did you leave Cordova?

A. At eight o'clock; that is, the cannery.

Q. In the morning?

A. In the morning.

Q. Yes. Well, what sort of a boat was it?

A. That was a 28-foot fishing boat.

Q. What was the name of it?

A. No. 2, Carlisle C. P. C.

Q. Well, I will ask you to state what you did with the boat and its crew?

A. We went down to Boswell Bay. It is on Hinchinbrook Island, and there we got a load of sand and—well, we entered the mouth of Boswell Bay at eleven o'clock.

Q. I will call your attention to defendant's exhibit number "I," being a chart showing the waters of Prince William Sound. I will ask you if you are able to point out upon this chart, defendant's exhibit "I," the course that you took from Cordova, starting at eight o'clock in the morning, March 7th, until you returned to Cordova?

A. Yes sir.

Q. Just step up and examine the map and state where you started from.

232 A. Started here from the Carlisle cannery.

Q. How far is that from Cordova?

A. That is about seven-eighths of a mile from Cordova.

Q. North of Cordova?
A. Yes, it is northerly.
Q. How is that indicated on the map, by what, cannery there?
A. There is a dock there.
Q. You may indicate that with the letter "C."
A. All right. (Witness places letter "C" in lead pencil, at point indicated.)
Q. Starting from there south—the dock of the Carlisle Canning Company, at Cordova, state——
A. (Interrupting:) At eight o'clock in the morning.
Q. (Continuing:) —state where you went: starting at "C," you came down to what point?
A. Then we went in a southerly direction.
Q. To what point, southerly direction to what?
A. To this point here at Spike Island.
Q. Mark that with a pencil "D."
A. D—capital D. (Witness places letter "D" in lead pencil, at point indicated.)

(Mr. Aretander:)

Q. What did you say "D" was?
A. Spike Island.

(Mr. McCord:)

Q. Then, leaving point "D" at Spike Island, where did you go?
A. In a southerly direction, past Cape Whitshed. That is "E." (Witness places letter "E," in lead pencil, at point indicated.) And further south to mouth of Boswell Bay.
333 Q. Indicated by the letter "F"?
A. "F." (Witness places letter "F" in lead pencil at point indicated.)

Mr. Aretander: That other one was "E" was it?
Mr. McCord: "E;" yes.
Mr. C. M. Hadley: Cape Whitshed.

(Mr. McCord:)

Q. Now, is that course indicated by the red line on the map, defendant's exhibit "I"?
A. Yes sir, that is indicated by this red line.
Q. And by the letters that you have placed on there?
A. By the letters, yes sir.
Q. Then, when you arrived at the entrance to Boswell Bay, at the letter "F," then where did you go?
A. Then I went into the Bay.
Q. On which side?
A. In around on the——
Q. On the southerly side?
A. The southerly side, yes.

Q. As shown by the red line?
A. Yes sir, as shown by the red line here.
Q. To what point?
A. Well, to a point up in the head of the Bay.
Q. Called "G" is it—indicated by the letter "G"?
A. Yes, a "G." (Witness places letter "G" in lead pencil, at point indicated.) We were looking for timber there, and trap piling.
Q. Then when you got to the letter "G," what course did you take?
A. Then I came right back, almost the same course, the opposite course.

234 Q. To what point?
A. Back to the mouth of Boswell Bay again.

Q. And indicated by the letter "F" is it?
A. Yes sir.
Q. Then what did you do at that point?
A. There is where we took on our load of sand.
Q. How much sand?
A. About two ton.
Q. Then, starting from the mouth of Boswell Bay, at the letter "F," did you follow the red line?
A. Yes.
Q. In what course?
A. That is in an almost due north course.
Q. To a point——
A. "H." (Witness places letter "H," in lead pencil, at point indicated.)
Q. "H."
A. Thence easterly.
Q. Northeasterly?
A. Northeasterly.
Q. To what point?
A. To mouth of Canoe Pass.
Q. How is that indicated—"I"?
A. Yes. (Witness places letter "I" in lead pencil, at point indicated.)
Q. By the letter "I." Then from there you went in what direction?
A. Then we went——
Q. From the mouth of Canoe Pass, the letter "I"?

A. We went easterly, more to the east.

235 Q. A little northeast, isn't it?
A. Yes.

Q. To what point?
A. To a point in the channel out here.
Q. West of Cordova?
A. West of Cordova.
Q. Marked how?
A. That is marked "J." (Witness places letter "J" in lead pencil, at point indicated.)
Q. And after leaving the point "J," as shown on the map?
A. Thence about due east.

Q. Due east to Cordova, was it?
A. To Cordova, yes.
Q. How is your course indicated, as shown on the map?
A. It is shown on the map here with a red line.
Q. Now, you say you left the cannery, or point "C," at eight o'clock in the morning, was it?
A. Yes sir.
Q. What speed did your vessel have?
A. About six miles an hour.
Q. Is that the limit of her capacity?
A. Yes, that is just about her limit.
Q. Then at what speed did you run from the cannery over to the point "F" at Boswell Bay?
A. Full speed.
Q. That would bring you to Boswell Bay at what time?
A. Eleven o'clock.
Q. Well, as you remember it, what time was it when you got there?
A. It was elev-n o'clock when I got there.
236 Q. Did your boat keep a log?
A. No sir.
Q. Well, from Boswell Bay—the entrance to Boswell Bay, why didn't you take your sand there?
A. It was not quite high water, and I wanted to see some of those timber-trap piling inside of the Bay.
Q. Then you went from the point "F," at the entrance of Boswell Bay, up to the point "G"?
A. Yes sir.
Q. On the westerly end of Boswell Bay, did you?
A. Yes sir.
Q. What is that distance, do you know?
A. That is about a mile and a quarter, something like that.
Q. Are you able to look at the scale and say how far it is?
A. Yes.
Q. Well, I wish you would do so.
A. (After scaling on defendant's exhibit "I.") Just a little over two miles.
Q. How long were you engaged in making the trip into Boswell Bay, the southerly end, or to the westerly end at point "G," and back to the entrance where the sand bar was?
A. From the time we left the entrance, going into the Bay, and back out again, and got our sand loaded, it was an hour.
Q. And got your sand loaded?
A. Yes. I figured on getting out of there at twelve o'clock.
Q. That sand was loaded at——
A. Point "F."
Q. —point "F," was it? How many tons did you take on?
237 A. About two tons.
Q. How was the tide at that time?
A. The tide was high water.
Q. High water?
A. Yes.

Q. When you took the sand on?
A. Yes sir.
Q. Well, I don't understand you. You said you could not load it, as I understood you, because of the high water, as you went in, and was it high tide when you——
A. I didn't load it when I went in because I had a little more flood tide yet. Yes, I had a little more flood tide yet, and while the tide was flooding I took advantage of that time to go up and see this timber up there and not take a chance on getting stuck inside at the same time.
Q. Then was the tide lower when you got back, or higher?
A. It was higher when I got back.
Q. You could not get up to that sand, was that it?
A. Yes, I could have got it, but I could get it just as well at deep high tide.
Q. You wanted to go up there?
A. Yes.
Q. You went up to see the timber?
A. Yes.
Q. Having come back to that point and loaded your scow, what time was it when you left point "F," or about?
A. It was about twelve o'clock.
Q. And after you left the mouth of Boswell Bay with your sand, going in a northeasterly direction up to the point "H" or
2:38 towards point "H," when did you begin to get dinner?
A. I began to get dinner just shortly after I left point "F."
Q. Who got the dinner that day?
A. I did.
Q. Who lit the fire?
A. I did.
Q. How did you start it?
A. I started it with kindling and some coal oil.
Q. Where did you get the coal oil?
A. In a can we had in the boat.
Q. How long did it take you to prepare the meal?
A. About forty-five minutes.
Q. That would bring you up to about 12.45, would it?
A. Yes sir.
Q. And where did you serve the meal?
A. I served the meal up on top of the cabin roof.
Q. What did you take up first?
A. I took up soup and bread and hardtacks.
Q. Meat?
A. Meat, yes.
Q. Did you take them all up at once?
A. I took them all at once, yes.
Q. What about the coffee?
A. Well, we took up coffee after *he* had our soup.
Q. You had your soup first?
A. Yes.

Q. Where were you at that time and place, indicate on the map about where you were at the time you served the soup?

239 A. We were a little bit the other side of point "H."

Q. A little bit the other side?

A. Yes.

Q. Just indicate it?

A. Well, I would indicate that right about here, at the cross there. (Witness making cross with lead pencil on defendant's exhibit "I.")

Q. So that the place where you served your soup was at the point indicated "X" on defendant's exhibit "I"—indicated by the figure "X" or letter "X"?

A. Yes.

Q. And what time was it at that place?

A. That was about 12.45.

Q. How long were you engaged in eating your dinner?

A. About twenty minutes.

Q. Did the boat stop while you ate your dinner?

A. No sir, kept right on going.

Q. Who was running her?

A. Why, Isaac Utness, was steering her.

Q. Indicate on the map, by some mark, the point at which you were when you finished your dinner?

A. Well, when we finished our dinner we were pretty close to the point "I" here.

Q. Just make the letter "M" there.

A. (Witness places letter "M" in lead pencil, at point indicated.)

Q. That is just west of the entrance of Canoe Pass, is it?

A. Yes, just——

Q. West of the entrance to Canoe Pass. That was about 12.45 you think?

240 A. Yes sir—or this was 12.45 here (indicating).

Q. What time was it when you reached point "M"?

A. That was after one o'clock.

Q. About what time after one?

A. Well, it was probably about ten minutes after one.

Q. And after you had finished the dinner, what did you direct, or did you direct the plaintiff to do anything?

A. Not the plaintiff in particular, no.

Q. State what took place then.

A. I says, "Now, boys, we have had our dinner and we had better wash up the dishes and slick up the boat in shipshape before we get in." And Ole Sandanger, he immediately volunteered to go down and wash the dishes, and says to the others on deck to pass them down, and John Jorgenson and Utness were standing right there at this steering post, and they passed down dishes to him, and just about then there was a big flare-up, a fire.

Q. How long after the plaintiff went down into the hold of the ship was it before there was a flare-up?

A. O, it was probably five minutes from the time he volunteered to go down until——

Q. Then did your boat stop?
A. No, not then exactly; it kept on going while the fire was on.
Q. The boat kept going?
A. Yes sir.
Q. Kept steering?
A. Yes, it just kept running. So soon as the flare-up was on, why, I rushed to do something for it, and Ole Sandanger was coming out of the cabin door all in flames and with the flame,
241 and just as quick as he got out so that he got clear I shut the door and hatch——
Q. And then what became of him?
A. —by that, smothering the fire.
Q. Did he jump overboard?
A. No sir.
Q. Or pushed overboard?
A. He ran around on deck with the other fellows. They were slapping him and hitting him with their hats and fanning him——
Q. Trying to get the fire out?
A. To get the fire out, and that took a few seconds. He went clear around there to the cabin, with his fire on him, and back again. By that time the fire had got smothered out, and the engine stopped, but just before the engine stopped and right after the fire was smothered out, then I turned my attention to Ole Sandanger, as quick as I possibly could, and I see he was all aflame and was in a dangerous position and condition, and I says to him "overboard, Ole, your only chance," and by that he was at the edge of the boat, and he went over; and almost immediately, why, there was a large plank there right alongside, and John Jorgenson and Isaac Utness—with their help, why, we pushed that plank over, and at the same time cautioned them not to hit him with this plank, because we were close to him and wanted to get the plank as close to him as possible without touching him with it, and we got it over and he got the plank, and in a few seconds—and we hollered to him to hang on and get the plank; and the engine had stopped. Just be-
242 fore we put the plank out, or about the time we were doing that, and then we put the rudder hard over and swung around and worked the boat over to where he was and picked him up; and getting back to him and picking him up and getting him on board and getting the engine started again took about fifteen minutes.
Q. Yes. And then where did you go?
A. Then we speeded up as hard as we could run for Cordova.
Q. And what time did you reach Cordova?
A. We reached Cordova at three o'clock. And then, as soon as we landed at Cordova, why, we ran up to the Blum-O'Neal store and got the telephone and telephoned for the doctor to be at the hospital to meet him when he got there, in case the doctor would be out some place, so that the doctor would be there by the time we could get to the hospital. And Isaac Utness—or John Jorgenson, I mean, he helped Ole Sandanger up to the hospital, and I told Isaac Utness to take care of the boat so that it would not go dry at the Cordova

wharf there. And by the time he got to the hospital and the doctor got there, it was 3.15.

Q. You reached Cordova, at the dock, at three o'clock?

A. At three o'clock, yes.

Q. Have you a record of that?

A. Yes sir.

Q. You kept a record of that, did you?

A. Yes sir, we got a record from the hospital about it—about the time that he entered there.

Q. He reached the hospital at what time?

A. At 3.15.

243 Q. Had this boat been in commission prior to this time, or had it made any trips?

A. It had made one trip.

Q. How were the tides on this day that you are speaking of?

A. The tide at this day was high water——

Q. I mean at the point when you got out here at the time of the accident?

A. At the time of the accident, it was ebb tide.

Q. And how was it at the time you left Point Boswell?

A. It was——

Q. Or Boswell Bay?

A. Just about high tide, fell in a few minutes. It was high water at 11.51 that day.

Q. How was the tide in the morning as you went down towards Boswell Bay from the cannery?

A. When we left the cannery it was low water and flooding.

Q. Have you examined the tide books to ascertain the condition of the tide at eleven o'clock when you reached the entrance to Boswell Bay?

A. Yes sir.

Q. What was the tide there.

A. That was my reason for taking the load of sand and getting out of there before the tide fell.

Q. I wish you would explain, Mr. Stensland, the hold of that vessel, the deck, tell us how it was constructed and the conditions surrounding it, where the stove was located in it, and where the engine room was, and describe the deck and the hatches and so on.

A. Well, the boat was a 28-foot double-ended boat, with a cabin on the front end of it—low cabin, and fish hatch about 244 amidships, and then the net room.

(Mr. Arctander:)

Q. The what?

A. A net room, the hold in the back end.

(Mr. McCord:)

Q. The hatches were right on the deck, were they?

A. The hatches are four inches above the main deck.

Q. How far above the deck where the hatches were was it up to the top of the cabin?

A. About two feet.

Q. And how did you get down into the cabin from the deck?

A. We got into the cabin from the deck through a door at one corner of the cabin, with a sliding hatch on the roof and a sliding door on the end of the cabin—back end of the cabin.

Q. So, that, in order to close the corner up—it was just like a square box there, was it, when that was closed?

A. Yes, pull the hatch back and then put this door in.

Q. And when the door was open and the hatch pushed back, you were right over the steps leading down into the hold, were you?

A. The stairway, yes sir.

Q. How far was it from the deck down to the bottom of the hold?

A. It was——

Q. Where the stove was located?

A. The cabin was about six feet in the clear inside.

Q. Which side of the boat was this door leading down into the cabin?

A. On the starboard side, and the stove was on the star-
245 board side.

Q. Where was the stove located with reference to the steps, the bottom of the steps leading down from the deck to the bottom of the cabin?

A. It was right in front of the steps.

Q. And what sort of stove was in it?

A. It was a Lang stove, sheet iron.

Q. Well, what size stove was it?

A. It was a four-hole stove, four holes in it.

Q. Sheet iron?

A. Yes.

Q. What sort of bottom was in it?

A. Cast iron top.

Q. What sort of a bottom did it have?

A. It had a sheet iron bottom. Everything was sheet iron excepting the top and lids.

Q. The top was iron, was it?

A. The top and lids are cast iron.

Q. You could take off the top?

A. Yes, take off the lids. Had an oven in it.

Q. Had what?

A. Had an oven.

Q. Yes.

A. And a firebox.

Q. Where was the firebox, in the front part of the stove?

A. The fire box was in the front part of the stove.

Q. And on this occasion was there any sand or ashes in it?

A. Yes sir, there was sand and gravel in the bottom of the firebox.

Q. About how many inches of sand, about?

246 A. About four inches of sand and gravel in the bottom of the firebox.

Q. Could you see the stove from the entrance to the doorway leading down from the deck to the cabin?
A. Not without stooping.
Q. You could stoop over and see it?
A. Stoop over and look in, you could see it.
Q. What sort of wood did you use in that stove?
A. We used fir wood from the boat shop in the Cordova cannery there.
Q. What sort of wood?
A. Why, it was short ends from planking—ends of planking and timber ends.
Q. Where did you keep this wood in the vessel?
A. We kept it in the cabin on the——
Q. Ricked up in there?
A. Ricked up underneath the seat that the stove sat on.
Q. The stove was not sitting on the bottom?
A. No, it sat on the bench.
Q. And how far about above the bottom or the floor of the cabin?
A. About eighteen inches from the floor of the cabin.
Q. You had the wood stored underneath?
A. A shelf right against the wall of the boat.
Q. Were there any broken boxes—salmon boxes there?
A. No.
Q. And how was the wood, was it wet or dry?
A. O, it was good dry wood.
Q. Always kept dry, was it?
A. Well, it was dry because we had just taken it out of the
247 boat shop, and fine first class lumber, only short pieces of it, and we split that up with a hatchect and used it for firewood.
Q. Did you keep any of your wood in the place where the fish were thrown?
A. No.
Q. The fish hatch, did you keep any wood over there?
A. No, we never kept any there, unless it was sometimes we would get a piece of 12 by 12 or a big cap end, that we would throw in there for a keepsake.
Q. On this day, the 7th of March, how much wood did you have there?
A. O, we had——
Q. I mean how much wood did you have in the cabin?
A. We had probably a couple of arm-loads—armfuls of wood.
Q. Enough to last you for how long?
A. Enough to make three or four fires.
Q. Good for three or four meals?
A. Yes, three or four meals.
Q. When did you go down to build the fire to get your dinner on the 7th of March?
A. That was close—shortly after twelve o'clock.
Q. Shortly after you left the entrance to Boswell Bay?
A. Yes, as soon as we left Boswell Bay——

Q. Tell how you made that fire?
A. What?
Q. Tell me how you made the fire?
A. I made the fire by splitting up some of this firewood, and put it into the stove, and poured a little of this coal oil out of this gallon coal-oil can into it, and put a match to it and the
248 fire was off.
Q. Did you have to replenish the fire before you finished your meal?
A. Yes, I put in wood a couple of times. Had a good hot fire while I was cooking the water for the soup and the coffee.
Q. What was the last utensil you took off the stove to finish your meal?
A. The last was our coffee.
Q. Did you take it off?
A. Yes sir.
Q. Was one of the caps on or off of the stove where the water was boiling?
A. I cooked the coffee down on the fire.
Q. Right on the fire?
A. Yes.
Q. Took the cap off?
A. Took the cap off, yes sir.
Q. Did you put the cap back after you had taken the coffee off?
A. Yes, I took the coffee pot off and put the cap on and passed it up and we poured our cups of coffee.
Q. What was the condition of the fire in the stove when you took the coffee pot off?
A. When I took the coffee pot off, there was a good bed of coals there in the stove, and it was hot.
Q. They were live——
A. Good live coals, yes sir.
Q. Blazing coals, were they?
A. Yes, good blazing coals.
249 Q. How much of it was there?
A. O, the whole bottom of the firebox was covered with it.
Q. How long did you say it took you after you took the coffee pot off to finish your meal?
A. After I took the coffee off—I took the soup and things up first and we ate that, about ten minutes, and then I got the coffee out and that was probably twenty minutes before I finished the meal when I took the coffee off and poured that.
Q. How long after you finished your meal was it before plaintiff went down to——
A. It was right immediately after we finished the meal.
Q. Did Mr. Utness have anything to do with putting the lid back on the stove?
A. No, no sir.
Q. Did he assist in taking the meal up?
A. He was not down there at all, while I was serving the meal, no.

Q. After you had finished that meal—I will ask you again, you have already stated it—but how long was it after you had finished that meal before the plaintiff went down to clean up?

Mr. Arctander: He said right away.

A. That was right immediately after we finished the meal.

(Mr. McCord:)

Q. Did you see the flare-up when it came—where were you at that time?

A. I was standing on the hatches.

Q. What did you see?

A. I saw the big fire flame coming out of the door of the
250 cabin.

Q. Could you see him inside of the cabin?

A. No, I could not see him then at all.

Q. Were you standing where you could see in the cabin?

A. Yes, I could look right into the cabin door from where I was.

Q. How long after he had got down was it—after the plaintiff had got down into the cabin, was it before you saw this flame?

A. It was probably five minutes after he went down into the cabin, that he volunteered to wash the dishes and fix up.

Q. What about this coal oil can, when was that put on the vessel?

A. That was put on the vessel the trip before.

Q. What do you mean by the trip before?

A. Well, that was the day before we went on another trip, and that was the first big trip that this boat had taken.

Q. Where was that trip?

A. That trip went down to the traps past Cape Whitshed.

Q. How far away from the cannery?

A. That day——

Q. On the 6th of March, the day before?

A. On the 6th of March, that was about fourteen miles down to the traps, and then out to Canoe Pass, this same place where this fire was, and then up to another little bay, cruising for pile timber, and we got grounded in that bay at low water.

Q. When did you leave on that trip in the morning, the
251 6th?

A. We left the morning of the 6th at eight o'clock.

Q. You had your breakfast that morning at the cannery?

A. Yes.

Q. Did you have lunch that day?

A. Yes.

Q. Who cooked the meal that day?

A. Isaac cooked the first meal that day. Just him and I together.

Q. Were you down there with him?

A. No, I was steering and he cooked the coffee.

Q. Who made the fire that day?

A. He made the fire that day. It was down at the traps.

Q. At the traps?
A. Yes.
Q. Then did you have dinner that night on the boat?
A. We had dinner that night at this bay where we stuck.
Q. What time was that?
A. That was about between six and seven o'clock that night.
Q. Who cooked the meal that day?
A. Well, that was Bert Bullinger and Isaac Utness.
Q. Who built the fire in the evening;
A. I could not tell you just exactly who built the fire that evening.
Q. You didn't build it?
A. No, I didn't build it that evening. It was one of the other two.
Q. You had two meals on the same vessel on the 6th of March, the day before this accident?
A. On the 6th of March, yes.
Q. How long were you held up on this bar?
252 A. We were held up there about three hours.
Q. Where was the bar?
A. It was in a little bay right across from Cordova.
Q. Did you light your lamps that night on the vessel?
A. Yes sir.
Q. Lanterns?
A. Yes sir.
Q. Where did you get the oil for them?
A. We got the oil out of this gallon coal oil can.
Q. Did you fill the lamps?
A. Yes sir.
Q. Did you have occasion to see the oil that was in there then?
A. Yes, I had occasion to.
Q. What sort of oil was it?
A. It was coal oil that I put into the side lights and the bright light.
Q. Was it coal oil?
A. Yes.
Q. It was not gasolene?
A. No, it was certainly coal oil.
Q. How much oil was left in the can at the time you finished lighting your lamps or your lanterns while you were on the bar the night before?
A. Well, filling the lamps, that was after we had our supper that night——
Q. Yes.
A. —and after we had filled the lamps the can was about half full.
Q. Then you went back to Cordova on the night of the 6th?
253 A. Yes sir.
Q. What time did you arrive there?
A. We arrived at Cordova about nine o'clock.
Q. Was any additional oil put into this coal oil can after you came back on the 6th?
A. No.

Q. Or on the morning of the 7th?
A. No sir.
Q. —was there any additional oil put in?
A. The morning of the 6th was the time the coal oil can was filled.
Q. Who filled this can on the morning of the 6th, when it was taken on board the vessel?
A. I did myself.
Q. You filled it on what date?
A. On the 6th.
Q. You hadn't had any trips before that?
A. No, we hadn't had no trips before and no occasion——
Q. Hadn't had any oil?
A. No occasion to use the lights or the fire in the stove.
Q. Where did you get this coal oil can?
A. We got this coal oil can upstairs and in our net lockers. The way the can——
Q. When did you get it?
A. The morning of the 6th.
Q. Who got it, you yourself?
A. I did myself, yes.
Q. What did you do with the can?
A. I took it down to the oil house and filled it with coal oil.
Q. Where did you fill it?
A. I filled it in the oil house.
Q. In what sort of a can?
A. Out of a fifty gallon drum.
Q. How was that drum marked?
A. That drum was marked with the ends painted white and stored in the oil house on the rack there.
Q. How did you take it out?
A. With a faucet on the end of the drum.
Q. Did you take it out yourself?
A. Yes sir.
Q. Took the oil out yourself?
A. Yes sir.
Q. And filled the can yourself?
A. Put the can under the faucet and turned the faucet.
Q. Did you see the oil?
A. Yes.
Q. And smelled it?
A. Smelled it.
Q. Do you now the difference between coal oil and gasolene?
A. Yes sir, I do.
Q. Can you distinguish the difference?
A. Yes sir.
Q. What was this oil that you put in there?
A. This was actual coal oil.
Q. Was there any gasolene put in there at all?
A. No, there was no gasolene put into that can.
Q. Then what did you do with it after you filled it?

A. I took it down to the boat that morning.

Q. Was that the only can of coal oil that was on the boat?

255 A. That is the only can of coal oil, yes.

Q. Was there any gasolene?

A. There was a five gallon can of gasolene.

Q. Where was that?

A. That was on the other side of the engine, on the port side of the boat, in a bunk there, in the lower bunk.

Q. How far from the stove was that?

A. O, that was about eight feet.

Q. After this flare up and the accident in question, what became of that can of gasolene?

A. That can was there intact.

Q. It was not burned or exploded or anything?

A. Not burned or exploded or hurt at all.

Q. That was there the next day?

A. Yes sir.

Q. Was the engine injured at all by this flare up?

A. No, only just slightly sooty or darkened.

Q. It blew the fire—it was a gasolene engine, was it?

A. Yes, it was a gasolene engine.

Q. It stopped. What caused it to stop, do you know?

A. The smothering—I smothered the fire out of the cabin, and then it stopped for want of fresh air to the carburetor, that is the reason it stopped.

Q. Are you positive that you did not take the coal oil can on board the vessel on the morning of the 7th instead of the morning of the 6th?

A. Yes sir. I had a short trip to make that day and had no reasons to think that I would be out any more than over the noon hour or the lunch hour.

Q. How much coal oil did you require per day, or I mean

256 how long would a gallon of coal oil last you for the purpose of lighting your lamps and cooking your meals out on a trip?

A. Well, a gallon can of coal oil would last ordinarily four or five days.

Q. How long, Mr. Stensland, would the coals in the stove remain hot after the fire had died down—such a fire as you left there when you examined it on the 7th?

A. Well, the coals may remain alive and red for about twenty minutes, with that kind of wood.

Q. Then how long would the heat remain in there?

A. Well, the heat would remain quite awhile after that; four inches of sand and gravel in the bottom of the stove, and the ashes with it.

Q. It would take him how long to cool off?

A. O, it would take them an hour or so to cool off so that they would——

Q. What sort of gravel was there kept in the stove?

A. Well, it was pretty fine gravel.

Q. It was not sand, it was part gravel and part sand, was it?
A. Yes.
Q. Where did you get it?
A. Well, we got it at the cannery, right at the beach there.
Q. About two inches of that, you say, in the stove?
A. About four inches in the stove, so that it would not heat down
nd burn the shelf it was on. The stove was set on racks—iron
acks, about six inches above this shelf that the stove sets on, and
e kept our dry wood and firewood under the stove and under this
bench, and the stove sat close up against the wall, and that is
57 the reason we had to have the stoves all filled with sand and
gravel in the bottom of them, so that the heat won't catch
re to the wood and burn that.
Q. Now, are you familiar with the places where the cannery had
ne gasolene and oil stored?
A. Yes.
Q. Where did the Carlisle Packing Company keep its coal oil and
here did it keep its gasolene?
A. It kept its coal oil in the oil house.
Q. And where is the oil house located?
A. That is located between the blacksmith shop and the China
ouse, close to the blacksmith shop. The gasolene and distillate
as kept on the wharf in front of the China house.
Q. And was there any coal oil kept out in front of the China
ouse with the distillate?
A. No.
Q. Where did you keep your coal oil?
A. We kept our coal oil—what we had on tap was in the oil house,
nd what there was besides that was right alongside of the oil house,
ith some barrels of paint and machine oil.
Q. How much coal oil did you have on hand at that time?
A. There was a fifty gallon drum in the oil house, that was on
p, and I don't know as there was any more coal oil outside of that.
Q. Where did the cannery get its supply of coal oil?
A. The cannery got it- supply of coal oil from Seattle.
Q. Did you get it from any other place up there?
A. No sir, unless it was—the only place they could get it
58 I believe, was Blum-O'Neal's and that would be in cans—
cases.
Q. In this oil house, then, there was just one can or one drum of
al oil?
A. Yes.
Q. That was on tap?
A. The fifty gallon drum.
Q. Did that have any words written on it—"Coal oil" or "Kero-
ne" or anything?
A. Yes, that had "Pearl Oil" stamped on the painted end of the
rum.

(Mr. Arctander:)

Q. What, "Pearl Oil"?
A. "Pearl Oil," they call it.
Q. Were there any other drums containing gasolene in the oil house?
A. No.
Q. How was the gasolene stored in the oil house?
A. The gasolene, what gasolene there was stored in the oil house was in cases, five gallon cans, boxed up in cases.
Q. In cases?
A. Yes, sealed goods.
Q. Where did the cannery company get its gasoline up there?
A. They got most of their gasolene from Katalla, and distillate from Katalla.
Q. How did you carry, or what sort of a receptacle or cases did you have your gasolene and distillate in?
A. Gasolene and distillate was always carried in 100-gallon drums.
Q. How were they indicated?
A. They were——
259 Q. How were they marked, I mean?
A. They were big drums, all marked with red ends.
Q. Red ends?
A. And right alongside of the bung was stencilled the contents of the can, with white paint, and the gravity and the name, either "Distillate" and gravity number, or "Gasolene" with its gravity number right alongside——
Q. After you got this can in the loft and came down, what time in the morning was it that you filled it on the morning of the 6th?
A. In the morning just before eight o'clock I filled it.
Q. Was it light?
A. Yes.
Q. Was it light?

Mr. Arctander: What was that? What time he filled the can?
Mr. McCord: Filled the can, yes.
Mr. Arctander: On the 6th.
Mr. McCord: Yes, on the 6th.

(Mr. McCord:)

Q. What time was it?
A. Just before eight o'clock on the 6th.
Q. In this oil house, was it light in there or dark?
A. O, yes, it was light then.
Q. Windows to it?
A. Yes, there is windows there, and the door open right in front of the rack.
Q. Were there any life preservers on this boat?
A. Yes sir.
Q. Where were they kept?

A. They were kept in the upper bunk in the cabin.

260 Q. How many?

A. Two of them.

Q. Now, when this plank was thrown over, after the plaintiff had jumped into the bay, I will ask you to state how far the plank was from him in the water when the plank went in after he did?

A. When the plank got into the water, it was about ten feet from him.

Q. In which direction, towards the bow of the vessel or towards the stern?

A. No, right—the momentum of the plank overtook him.

Q. Then it floated right up to him did it?

A. O floated right up in front of him and he swam towards shore to get to the plank.

Q. What size plank was it?

A. It was a 2 x 12.

Q. How long?

A. About 16 feet long.

Q. What is the distance from the entrance to Canoe Pass over to the dock where you landed on the afternoon of the 7th when you brought the plaintiff in?

A. Just about nine miles.

Q. Just about nine miles?

A. Yes.

Q. And you reached there at three o'clock?

A. Yes sir.

Q. And were you going full speed ahead?

A. Yes sir, we were going full speed.

Q. You were going against the tide, were you? Was the tide coming out?

261 A. The tide was going out, but part of the tide was with us and part of it was against us, so that the tide would make about an offset—standoff.

Q. Where was the tide against you and where was it with you?

A. It was against us on this part here.

Q. That is on which part, the part nearest Cordova?

A. Nearest Cordova, and that is nearest Canoe Pass.

Q. About how many miles was the tide against you and about how many miles was it with you?

A. Well, it was probably one-third of the way with us—or one-third of the way against us and two-thirds of the way with us.

Q. Have you had any experience with the use of coal oil in building fires?

A. Yes sir.

Q. Do you know anything about its properties or its tendency to flare up or explode?

A. Yes, I have had some experience with it.

Q. Assuming that there were some hot coals in the stove, what would be the effect of pouring——

A. If you pour coal oil into hot coals or onto anything that is hot that will heat that oil to generate gas——

Q. Or vapor?
A. Or vapor, yes, or gas vapor, that vapor will be explosive.
Q. When will it be explosive?
A. When it is heated up.
Q. Will it explode before a flame is touched to it, or not?
A. No, not unless the flame is touched to it.
Q. And if a flame is touched to it, what will it do?
A. Then it would, if it is not confined, it will make a big
262 flare, and if it is confined it will make an explosion.
Q. What about the explosiveness of gasolene, have you observed that?
A. Yes sir.
Q. What is the effect of that?
A. Gasolene—there is vapor arising from gasolene that would be confined and would be on the same principle as the vapor and gas that comes from coal oil when it is heated; and you put gasolene onto a fire, or pour it into anything like that, and touch a match to it, it will cause a big flare up.
Q. It will not explode?
A. No, it will just flare up, just the same as coal oil would if it was put onto something hot; but coal oil, if that is pourned onto anything cold like gasolene would be, that would burn in a flame, but not as quick as gasolene is.
Q. Was there any explosion——
A. No, no explosion.
Q. (Continuing:) —on this occasion, on the 7th of March, when the plaintiff was injured, was there any explosion?
A. No burst of any kind, or explosion, it was just a big fire.
Q. A flare-up?
A. A flare-up, yes.
Q. What damage was done to the interior of the cabin by this flare-up?
A. Well, there was calendars and magazine pictures hung around the wall, and paper sacks and things over the lunch box was in there.
Q. What happened to them?
263 A. They were just scorched black on the edges, and the inside of the cabin, where it was not painted inside, it was new lumber you know, looked new, that was darkened and black—not black, but it was darkened a bit.
Q. Were there any loose article around, in the way of kitchen utensils?
A. Yes, there was dishes in there.
Q. What happened to those?
A. They were all in there, all intact.
Q. Were any of them thrown out on the floor?
A. No.
Q. Stayed right on the shelves?
A. All right there where they were when they were passed down.
Q. Were there any of the skillets or teakettle or coffee pot or those things—what happened to them if anything?

A. Nothing happened to them at all; they were just the same as they were when they were passed down to him.

Q. Were they thrown down on the floor?

A. No, nothing scattered around or anything. It was just a big fire. The black was the smoke, you know, that came from the fire that was in there.

Q. Was the engine inside the cabin?

A. Yes.

Q. All under the same covering, was it?

A. Yes sir.

Q. Were there any loose articles in there affected by this flare up. I mean thrown off of their places?

A. Off of their places—no, nothing was thrown off of their
264 places.

Q. Nothing broken about the engine?

A. No.

Q. Just as soon as you turned the air on, you started her right up and she went right ahead.

A. Yes, opened the cabin door and let the fresh air get in, and primed her, and turned her over, and she went without any trouble at all.

Q. Nothing broken in the cabin at all?

A. No.

Q. Nothing dislocated from the place where it was laid?

A. No sir.

Q. What about the coal oil can?

A. The coal oil can was cracked open in the seam and down the side and the top of it was cracked open where it was soldered or clinched together.

Q. How about the bottom?

A. The bottom was all right.

Q. And where was the coal oil can lying?

A. It was lying on the floor in front of the stove—in front of the stove, in front of the engine.

Q. Did plaintiff tell you anything about how the accident occurred, right afterwards?

A. Yes.

Q. What did he say, how did he say it occurred?

A. Well, he was telling that he used the coal oil in there to build a fire with; and the first thing he wanted to know if it was gasolene in that can, and I told him "no it could not possibly be gasolene."

Q. Did he tell you how it occurred?

265 A. Yes. It——

Q. What did he say?

A. He said that he poured this oil on the fire to start it up with and—I don't remember whether he said that he put a match to it, or not, in particular, but he didn't talk very much about the fire right immediately, anyway. The main thing he was worried about was his burns, of course.

Q. You were worried about that, too?

A. We worried about that; and not paying very much attention to that part of it.

Q. Did you talk to him afterwards about whether or not he put a match to it?

A. No, I never questioned him particularly about it afterwards.

Q. You don't recall what he said in that regard?

A. No. I know we all divided up our clothes with him, got his wet clothes off and we all took part of our garments, dry you know and put on him, so as to keep him warm as possible, and also kept him from the breeze of wind that was blowing, to keep that from blowing direct on him.

Q. You got him back in the cabin did you?

A. Got him back there, stood him on the steps, stood him on the steps of the cabin.

Q. He didn't lie down or anything?

A. No, and then I held an oil skin coat in front of him, to keep the wind from blowing directly onto him.

Q. To what extent was he burned?

A. Why he was burned with—his hands, the skin was
266 hanging in rags from off his hands, and his face didn't look bad at all at the time. It was white nearly all over.

Q. Was he burned on the body when you took the clothes off of him?

A. There was some spots on the legs that was burned a little.

Q. Were his clothes burned through?

A. No, they were not burned clear through. They were burned so that they fell to pieces. His legs was burned in places, and his clothes was burned so that they just fell to pieces. Even his drawers was scorched brown.

Q. Have you got the Pacific Coast Tide Tables which apply to Alaska?

A. Yes sir.

Q. —Alaskan waters?

A. Yes sir.

Q. I will ask you if this book, identified as defendant's exhibit Number "2" entitled "Department of Commerce, Pacific Coast Tide Tables for Western North American, Eastern Asia, and many island groups, for the year 1917" is the tide tables that are applicable to these waters?

A. Yes sir.

Mr. McCord: I offer in evidence defendant's exhibit number "1" being the chart of the waters of Alaska, showing the course that the vessel took on the day of the injury. And also the United States Government Tide Tables for the year 1917.

The chart and United States Government Tide Tables, above referred to, were marked, respectively, Defendant's exhibits "1" and "2," same being returned herewith.

267 (Mr. McCord:)

Q. I will ask you if you could identify this can as the can that you took on board the vessel, that is, the coal oil can, was it the same can that you took on the vessel?

A. O, yes, it was the same can, yes sir.

Q. And after the flare up down there, could you still identify the can as being the same can that you had?

A. If I saw the can now I could tell it.

Q. Even though it was exploded——

A. Yes.

Q. —or burst?

A. Yes.

Q. To what extent was it broken up by this fire?

A. The seam down the side of the can, and then there is a round top on it with a spout with a screw top on it.

Q. Was the top entirely off?

A. No, just partly off.

Q. Just broken?

A. Just opened up.

Q. How about the seam?

A. The seam was opened up the same way.

Q. It was a round can, was it?

A. Well, it was not much out of shape, but it just opened up.

Q. Where the seam opened up on the side, how wide was the opening?

A. O, about an inch.

Q. And the bottom, was that blown clean off?

A. The bottom was not blown off at all.

Q. That was intact?

268 A. That was intact.

Q. How about the spout?

A. The spout was intact. It was just the seam where the round top soldered on the body of the can and then the seam down the body.

Q. The can never lost its identity at all, you saw it afterwards?

A. Yes sir.

Q. Was it the same can that you took on board on the morning of the 6th?

A. Yes sir, the very same can.

Q. What was Mr. Utness doing, did he help you make this fire on the 7th, was he down in the cabin when you were making the fire?

A. No, he was not in the cabin.

Q. What was he doing?

A. He was steering.

Q. At the time you made the fire?

A. Yes.

Cross-examination.

(Mr. Arctander:)

Q. Mr. Stensland, you are still in the employ of the Carlisle Packing Company?
A. Yes sir.
Q. You are now about to go up to Alaska again——
A. Yes sir.
Q. (Continuing:)—to work for them in a position next to the superintendent of their new cannery, are you not?
A. Yes sir.
269 Q. You have been promoted?
A. Yes.
Q. A bigger salary, greater salary and greater responsibilities——
A. Yes sir.
Q. (Continuing:)—than the position that you had at the time that this accident happened?
A. Yes sir.
Q. Did you not, after you had had your lunch and before this accident happened, run along the beach and tried to hunt ducks?
A. No sir.
Q. You did not? When the other witnesses say that, that is not true?
A. Well, we never——
Q. Well, just answer that "Yes" or "No," that is all.

Mr. McCord: I object to the question as irrelevant, incompetent and immaterial. That is passing on testimony of some other witness. It is not substantive testimony.
Mr. Arctander: Well, I will waive it, if you don't want it.

A. I can't answer that in one question.

Mr. Arctander: All right, that is all.

Redirect examination.

(Mr. McCord:)

Q. Did you shoot any ducks that day?
A. Yes sir.
Q. When?
A. While we were eating our lunch.
270 Q. Just state what occurred.
A. We were running on our straight course and we passed a duck that was swimming in the water, and it flew, and John Jorgenson shot that duck on the fly.
Q. Killed it?
A. Killed it, and we picked it up as we went by it, without altering our course or slowing our speed.
Q. The duck fell right in front of you?

A. Fell right in front of us. Steered right by it. And that is the extent of the duck shooting.

Q. How far above the water line was the batch deck? I guess that is what you call it.

A. The main deck of the boat was about twelve inches above the water line.

(Witness excused.)

271 STATE OF WASHINGTON,
County of King, ss:

I, Earl E. Richards, a notary public in and for the state of Washington, residing at Seattle in said county, do hereby certify that:

The annexed and foregoing depositions of the witnesses John Peterson and Ivar N. Stensland, on behalf of the defendant, were taken before me and reduced to writing by myself at Seattle, in said county and state, on February 14, 1918, and February 26, 1918, respectively, in pursuance of the annexed stipulation.

That the above named witnesses, before examination, were by me duly sworn to testify the truth, the whole truth and nothing but the truth.

That the defendant's exhibits "1" and "2," herewith returned, are the exhibits offered in connection with the deposition of the said Ivar N. Stensland.

That the reading and signing of said depositions by the witnesses was expressly waived by the respective parties hereto.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, this 4th day of March, 1918.

[SEAL.] (Signed) EARL E. RICHARDS,
Notary Public in and for the State of Washington,
Residing at Seattle, in said State.

Notary fees, $7.60.

272 Filed Sept. 14th, 1920.

Department One.

No. 15407.

OLE SANDANGER, Respondent,

vs.

CARLISLE PACKING COMPANY, Appellant.

The plaintiff Sandanger, commenced this action in the Superior Court for King County, seeking recovery from the defendant packing company, for personal injuries alleged to have been the result of the negligence of the defendant in furnishing as a part of the equipment of one of its motor boats, upon which he was employed, gasoline in a one-gallon kerosene oil can, under such circumstances

as to induce him to innocently use it as kerosene; resulting in a flare-up or explosion, causing him to be seriously burned. Trial in the Superior Court, sitting with a jury, resulted in a verdict in favor of the plaintiff and a judgment rendered thereon in the sum of $4,175.00, from which the defendant has appealed to this court.

Respondent Sandanger is a resident of this state. Appellant packing company, is a corporation created and existing under the laws of this state, with its general offices in Seattle. It owns and operates a salmon cannery near Cordova, Alaska, in connection with which, it own- and operates several motor boats. On and prior to March 7, 1917, respondent was employed by appellant to work in and about its cannery, and also upon its motor boats as he might be directed. On that day he was assigned to duty upon one of appellant's motor boats, as one of the crew consisting of himself and three others, one Stensland being in command. The boat was 28 feet long, with an enclosed cabin forward, in which there was a motor near the middle, and a bunk and bench along one side, and a bench along the other side on which sat a small sheet iron wood burning stove used for cooking meals for the crew. Under the bench,
273 on which the stove sat, but further forward, and evidently in a safe place, there sat the one-gallon kerosene oil can here in controversy. This can with kerosene in it, had been furnished as a part of the boat's equipment, for the purpose of filling the lamps of the boat. According to conceded custom, kerosene was taken from the can and used to start fires in the small cook stove; that is, by first pouring a small quantity of kerosene on the wood and then applying a lighted match to the fuel so prepared. We here note in passing that there is no suggestion in the argument of counsel that such use of the kerosene constituted carelessness on the part of one so using it. Respondent had worked upon this boat as a member of its crew on several former occasions and was well acquainted with its arrangement and equipment, including the kerosene oil can; and also the custom of using kerosene from the can to start fires in the stove. About 7 o'clock in the morning of the day in question, the boat left the cannery to go some twenty miles southwesterly to a place where suitable sand could be procured for some contemplated masonry work, with a view to bringing back a load of the sand in sacks. The boat arrived at its destination about an hour or so before noon. The boat was provisioned for the noon meal of the crew, in view of the fact that the trip would take all day. One of the crew started a fire in the cook stove for the purpose of preparing the noon meal, using instead of kerosene, a bunch of waste, which had been saturated with oil from use in wiping the engine. The meal being prepared, and evidently the work of loading the sand being finished, the food was brought out on deck, where it was served and eaten. It seems that the boat at that time had started on its homeward journey, and the work of the day, other than washing the dishes, being finished the crew were at ease, and privileged to rest and enjoy themselves.

About an hour and a half or two hours after serving the
274 meal, when the fire in the cook stove was allowed to go out, and after it actually had gone out, and the stove and ashes

therein had become cold, according to positive testimony which the jury had a right to believe, respondent was directed by Stensland to start a fire in the stove and heat water to wash the dishes. He went into the cabin, placed some wood in the stove, took the kerosene oil can from its accustomed place, poured a small quantity of whatever was in the can on the wood, then holding the can in one hand, away from the stove, lighted a match, and dropped it upon the wood in the stove, when instantly there was a flareup of great violence amounting practically to an explosion, which was of such force as to cause some damage apart from the mere burning that immediately followed. Respondent was thrown across the cabin but soon recovered himself and rushed upon deck with his clothes on fire. His associates being unable to put out the fire on his clothes, he jumped overboard, when a plank was thrown to him, and he was taken on board. The fire in the cabin was extinguished and the boat proceeded to Cordova as fast as possible arriving there late in the afternoon, when respondent was given medical treatment. Respondent's counsel prosecuted the case and was awarded recovery upon the theory that appellant had negligently furnished gasoline in the kerosene oil can instead of kerosene, and that such act was negligence on the part of appellant rendering it liable to respondent for the injuries received in the manner we have described.

It is first contended in appellant's behalf that the trial court erred in overruling its challenge to the sufficiency of the evidence to support recovery, on the ground of its negligence, presented by proper motions timely made. Practically the whole of the argument of counsel touching this contention, apart from the federal maritime question to be presently noticed, has to do with the question of
255 whether the kerosene oil can contained gasoline or kerosene at the time respondent used whatever was in the can to start the fire in the stove. If it was kerosene, appellant would not be responsible for respondent's injuries; while if it was gasoline, it seems plain that because of the liability of gasoline to generate explosive gas when so used, appellant would be responsible for respondent's injuries; or, rather, a jury could well find from the evidence that the furnishing of gasoline under such circumstances was negligent and the proximate cause of respondent being injured. There was testimony fully warranting the jury in believing; that when the boat returned to the cannery from its previous day's trip there was no kerosene or other fluid in the can, it being all used that day in filling the boat's lamps, and there being none left, even for the starting of a fire in the cook stove on that day; that whatever was in the can at the time respondent was injured was put into it from appellant's store of supplies on shore between the time the boat returned the day before and the starting of the boat on its trip that day, and that no one attempted to use whatever was in the can, to start a fire in the cook stove that day, until respondent did so. The evidence does not disclose with certainty who filled the can or where it was filled, but there is some ground for inferring that it was filled by Stensland, the commander of the boat, from appellant's store of supplies on

shore. It in any event seems to have been his duty to see that the can was filled. There is some evidence tending to show that appellant did not exercise due care in keeping its gasoline and kerosene receptacles in its store of supplies on shore properly designated so that their respective contents would be readily distinguishable. This evidence is not very satisfactory, but is of some moment in view of what actually happened. The testimony of chemists and men of experience with reference to the comparative burning and explosive qualities of kerosene and gasoline, furnished the jury
276 abundant ground for believing that the use of kerosene in a cold stove in the manner respondent used whatever was in the can when he attempted to start the fire, would not cause any such an explosion as then occurred; while the use of gasoline in a cold stove in such manner would cause such an explosion. That is, by the pouring of a small quantity of kerosene on the wood, explosive fumes would not be generated sufficient to cause an explosion by the applying of a lighted match thereto; while such use of a small quantity of gasoline would generate fumes sufficient to cause such an explosion. There is no suggestion in the argument of counsel, indeed we think there is no ground therefor, that the contents of the can was other than kerosene or gasoline; so it becomes a question of the evidence showing with a fair degree of probability that it was gasoline instead of kerosene; that is, as to whether the evidence, was such as to take the answer to that question out of the realm of speculation and conjecture. Counsel for appellant rely upon our decisions which are reviewed by Judge Chadwick in Parmelee v. C. M. & St. P. R. Co., 92 Wash. 185, holding in substance that the evidence must be such as to prove a fact necessary to recovery, by a degree of certainty that removes the inquiry from the realm of speculation and conjecture. We have no disposition to recede from the holdings in these decisions. We are of the opinion, however, that the evidence introduced upon the trial of this case was such as to render these decisions without controlling force upon our present inquiry. Were we trying the question of fact which the jury were called upon to determine, we might not arrive at the same conclusion, but that is not sufficient to warrant us in ignoring the verdict. We are not the triers of the fact, but are permitted here to inquire only as to whether or not there was substantial evidence to suppport the conclusion the jury arrived at; that is, as to whether or not the evidence leaves the answer to the question as one of speculation and conjecture. We hardly
277 think it possible to state in general terms a rule which would furnish any exact measure for the decision of questions like this. Probably the language of Judge Chadwick in Frescoln v. Puget Sound Traction, Light and Power Co., 90 Wash. 59-65, comes as near as is possible of doing so, wherein he said:

"Speculation and conjecture, when used in this connection, mean the same thing. The cause of an accident may be said to be speculative when, from a consideration of all the facts, it is as likely that it happened from one cause as another. As soon as the balance of

possibilities is broken, the jury is put to the burden of weighing the evidence."

We think the jury was put to such burden in this case, and conclude that the trial court did not err in refusing to sustain the challenge made to the evidence in appellant's behalf, viewing this branch of the inquiry, as we have, apart from the federal maritime question, which we will now proceed to notice.

Counsel for apellant contend that respondent's recovery, as to its measure, is controlled exclusively by the maritime law as administered in the federal courts in admiralty cases, and that he possesses no rights whatever under substantive common law because his employment and service on the day he was injured was purely of a maritime nature; and, while admitting that respondent may seek recovery from appellant in the common law courts of the state, that his recovery is limited under the maritime law by the amount of necessary expenses he may incur in his cure, and maintenance while being cured, which is conceded to be $175, in addition to the service of that nature already rendered him by appellant.

It does seem that respondent's employment and service on the day in question was maritime in its nature. We shall so assume in our disposition of the case, without further discussion of that question.

The Minna, 11 Fed. 759;
Saylor v. Taylor, 77 Fed. 476;
Lawrence v. Flatboat, 84 Fed. 200;
Domenico v. Alaska Packers Assn., 112 Fed. 554;
The J. S. Warren, 175 Fed. 314;
The Virginia Belle, 204 Fed. 692;
North Alaska Salmon Co. v. Larsen, 220 Fed. 93.

Counsel for appellant invoke the federal statute defining the admiralty jurisdiction of the federal district courts, reading as follows:

"Sec. 24. The district courts shall have original jurisdiction as follows: * * *

"Third. Of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common-law remedy where the common law is competent to give it; * * *"

36 U. S. Statutes at Large, 1091.

Proceeding upon the theory that this statute saves to suitors merely the right to sue in the common law courts and avail themselves of the procedure of those courts, and does not enable such suitors to avail themselves in those courts, any more than in the federal admiralty courts, of the rules of substantive common law as controlling of their rights; counsel for appellant invoke the principles of maritime law as announced by Mr. Justice Brown, speaking for the Supreme Court of the United States in The Osceola, 189 U. S. 158, 175, after reviewing the subject at length in the light of its historical development, as follows:

"Upon a full review, however, of English and American authorities upon these questions, we think the law may be considered as settled upon the following propositions:

"1. That the vessel and her owners are liable, in case a seaman falls sick, or is wounded, in the service of the ship, to the extent of his maintenance and cure, and to his wages, at least so long as the voyage is continued.

"2. That the vessel and her owners are, both by English and American law, liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, or a failure to supply and keep in order the proper appliances appurtenant to the ship.

"3. That all the members of the crew, except perhaps the master, are, as between themselves, fellow servants, and hence seamen cannot recover for injuries sustained through the negligence of another member of the crew beyond the expense of their maintenance and cure.

"4. That the seaman is not allowed to recover an indemnity for the negligence of the master, or any member of the crew, but is entitled to maintenance and cure, whether the injuries were received by negligence or accident."

279 If our decision in Larsen v. Alaska Steamship Co. 96 Wash. 665 is to remain as a correct exposition of the law touching our present inquiry, that decision seems to us to be here decisive in favor of appellant. The employment and service of the plaintiff involved in that case was concededly maritime in its nature. He was injured while the ship was anchored off shore in Alaska waters, when at work preparatory to working cargo, by falling through a hatch of the ship upon his taking hold of an insecurely fastened chair pedestal to steady himself as he was about to descend through the hatch, which, giving way, caused him to fall and suffer the injuries for which he was awarded recovery. Contention was there made against the plaintiff's right of recovery upon the same theory in substance as the contention is here made in behalf of the appellant; but it was then thought by the members of this court participating in that case, that the decision of the Federal Supreme Court in The Hamilton, 207 U. S. 398, and other prior federal decisions, called for the conclusion that a substantive common law right could be invoked by the plaintiff apart from the maritime law; but the language of the decision also seems to clearly indicate that the plaintiff's right of recovery could be rested upon the exception to the limitations put upon seamen's recovery by the maritime law, mentioned in the second of the maritime law propositions above quoted from the Osceola decision. That is, that the vessel and her owner are liable to an indemnity for injuries received by seamen in consequence of the unseaworthiness of the ship, and as to such injuries are not limited to expenses incurred for maintenance and cure. Concluding his discussion of the legal basis of the plaintiff's right of recovery in that case Judge Chadwick, speaking for the court, at page 675, said:

280 "Our conclusion is that an action in personam may be maintained for a tort committed on the high seas if the

accident is attributable to the "unseaworthiness" of the vessel, that that common law courts of a state have jurisdiction concurrent with the Federal courts when proceeding in personam, and that the state court will grant the relief that a common law court would have granted had the case been originally triable in such court."

This, it seems to us, is but a recognition, and correctly so, that as to injuries resulting in consequence of unseaworthiness, the rules of common and maritime law, governing such a suitor's rights, are the same. Now, if the insecurely fastened chair pedestal, the giving way of which caused the plaintiff Larsen to be injured, was "in consequence of the unseaworthiness of the ship," as we think was correctly held in that case, so as to enable him to recover under the maritime law, which in effect adopts the rule of the common law as to injuries so occasioned, it seems to us equally plain that the negligent furnishing of gasoline as kerosene under the circumstances inducing its dangerous use, was was done in this case, rendered this boat unseaworthy in the same sense that the ship was rendered unseaworthy in the Larsen case. It seems hardly possible to state in general terms a definition of "unseaworthiness" as used in the maritime law in this connection which will furnish an exact standard in all cases, in determining just what defects in structure or equipment should be considered as rendering a vessel unseaworthy. In Carver on Carriage of Goods By Sea, 5th Edition, Section 18, it is said: "The ship must be fit in design, structure, condition and equipment to encounter the ordinary perils of the voyage. She must also have a competent master and a competent and sufficient crew." This was said having in view the general question of liability of carriers to the shippers; but we apprehend that the law calls for an equal degree of safety as to "design, structure, condition and equipment," looking to the safety of seamen. It seems to us that the negligent furnishing of the gasoline in the place of kerosene under such circumstances as was done in this case, was fraught with even greater perils than the furnishing of the insecure chair pedestal, as was done in the Larsen case. The former menaced the safety and even the lives of the entire crew, and the existence of the boat itself; while the latter was a menace only to the individual that might seek to use it in some such manner as Larsen did. The following authorities we think lend support to our conclusion that the maritime law does not stand in the way of respondent's recovery in this case.

The Titana, 19 Fed. 101;
The Neddlerman, 28 Fed. 855;
The Troop 128 Fed. 856;
The M. E. Luckenbach, 174 Fed. 265;
The Argo, 210 Fed. 873;
The Badger, 218 Fed. 81.

Counsel for appellant call to our attention and strongly rely upon the decision of the Supreme Court of the United States in Chelentis v. Luckenbach S. S. Co. 247 U. S. 272. That decision, it is argued, establishes the law as different from our conclusions reached in the

Larsen case, and also different from what was theretofore generally thought to be the law as gathered from expressions of the courts found in previous federal and state decisions. A seaman was washed overboard, and his leg broken, as it was claimed, as a result of a negligent and improvident order given by a superior officer. It was held that he could not recover as for injuries received "in consequence of the unseaworthiness of the ship," and therefore could not recover damages at all as for negligence. Plainly that was not a case of unseaworthiness of the ship. We think that decision does not express any view of the law contrary to our conclusion reached in the Larsen case, other than contrary to our seeming conclusion there reached, that Larsen's recovery could be rested upon the common law apart from the maritime law.

We conclude that respondent's recovery in this case may be sustained upon the theory that his injuries were received in consequence of the "unseaworthiness" of the boat upon which he was working.

282 A number of assignments of error are made by counsel for appellant, touching the court giving instructions and its refusal to give certain requested instructions. What is said in the briefs touching these claims of error is practically nothing more than assertions of error, they being presented to us practically without argument. We do not feel called upon to dispose of them other than in an equally summary manner, and deem it sufficient to say that as is disclosed by the record and brief of counsel before us, we are unable to say that the court committed any prejudicial error in the giving or refusing to give instructions.

The judgment is affirmed.

PARKER, J.

We concur:
HOLCOMB, C. J.
MAIN, J.
MITCHELL, J.
TOLMAN, J.

283 In the Supreme Court of the State of Washington, October Session, A. D. 1920.

Wednesday, Nov. 17, 1920.

No. 15407.

OLE SANDANGER, Respondent,

v.

CARLISLE PACKING CO., Appellant.

Judgment.

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of King County,

and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 17th day of November, A. D. 1920, on motion of Aretander & Lysons, of counsel for respondent, considered, adjudged and decreed, that the judgment of the said superior court be, and the same is, hereby affirmed with costs; the petition for rehearing denied and the said Ole Sandanger have and recover of and from the said Carlisle Packing Company and from the American Surety Co., surety, the sum of $4,175.00, with interest thereon at 6 per cent per annum from September 10, 1918, until paid, and the costs of this action taxed and allowed at Ninety-seven and 65/100 Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said superior court for further proceedings, in accordance herewith.

284 Filed in Clerk's Office, Mar. 10, 1919. Percy F. Thomas, Clerk, by A. N. Olson, Deputy.

Copy.

15407.

No. 127,113.

In the Superior Court of the State of Washington for King County.

OLE SANDANGER, Plaintiff,

vs.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Defendant's Proposed Statement of Facts.

285 No. 127,113.

OLE SANDANGER

vs.

CARLISLE PACKING COMPANY, a Corporation.

Defendant's Proposed Statement of Facts.

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1 & 2 In the Superior Court of the State of Washington for King County.

No. 127,113.

OLE SANDANGER, Plaintiff,

vs.

CARLISLE PACKING COMPANY, a Corporation, Defendant.

Be it remembered, that heretofore and on to-wit, September 4, 1918, the above entitled cause came regularly on for trial in the above entitled court, before the Honorable Mitchell Gilliam, one of the judges of said court, in Department No. 4 thereof, sitting with a jury,

The plaintiff appearing by his attorney and counsel, Mr. John W. Arctander (of Messrs. Arctander & Lysons),

And the defendant appearing by its attorneys and counsel, Mr. E. S. McCord (of Messrs. Kerr & McCord), and Mr. Clyde M. Hadley (of Messrs. Hadley & Hadley),

Whereupon the following proceedings were had and testimony taken, to-wit:

3 Mr. Arctander: Your Honor, at this time I desire to introduce the Alaska law, which is pleaded in the complaint, and which counsel has candidly agreed that they will allow me to offer from the session laws of Alaska, and will admit that it is the law still in force and effect in Alaska, that there have been no changes or amendments whatever. I understand that is correct?

Mr. McCord: I do not offer any objection, Your Honor, to the statement made by counsel. We object to the introduction of the statute on the ground that it is irrelevant, incompetent and immaterial, not upon the ground that this statute which he offers is not the best evidence, we waive that question, but we preserve the right to object to the introduction, upon the theory and for the reason that it has no application to this case at all, is irrelevant, incompetent and immaterial, and particularly that part of section two of the Act where it provides that all actions hereafter brought against a master or employer such as is mentioned in the first section hereof to recover damages for personal injuries to an employe "the fact that an employe may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe." That is the point I object to. This question as to what rule of law shall prevail in the forum where the action is being tried is the law of the forum; it is the law of the state of Washington as to what shall be denied or what shall be

4 permitted to be recovered in an action of negligence. It is true that a cause of action can be granted by a foreign state

or a foreign territory, and this court will recognize that cause of action, but when it comes to an action in this court to recover for damages for negligence, then it is not for the Alaska statutes or the Alaska Legislature to say what law shall govern the procedure in this court. In other words, the doctrine of comparative negligence does not prevail in this state, as I understand it, and it is impossible for the court to recognize any rule of law attempted to be established in Alaska covering that proposition or covering that point. And, therefore, it seems to me that this provision of the statute as to the right of the plaintiff to recover, notwithstanding he may be guilty of contributory negligence if his contributory negligence is slight, cannot control the procedure of this court, and you cannot adopt a rule adopted by the Legislature of Alaska in a trial of a case in this court, as to what instruction shall be given to the jury on the question of contributory negligence. If the plaintiff was guilty of contributory negligence, under the law of this state, it is the duty of the court to deny a recovery.

I object to it on the ground that it is incompetent, irrelevant and immaterial to any issue in this case.

The Court: Objection overruled.

Mr. McCord: Exception.

The Court: I presume it is the same as you have it copied in your complaint?

Mr. Arctander: Yes. I will only read the part I have copied.

The Court: You may read it to the jury.

Mr. Arctander: I want to say to Your Honor at this time, however, that according to my manner of trying this kind of a case, if there is any question about anything I am not going to have it in the record against me; if the verdict is given it is going to stand. The only decisions that there are upon the point as to this contributory negligence in other states prevail in my favor, that is, Tennessee and Kentucky, those are the only decisions there are and they are good as to the rule, but since it has not been decided by this court——

The Court: I have no question about the law.

Mr. Arctander: No, but I am going to tell Your Honor that since it has not been decided by this court, I refer in the instructions I ask that it be negligence just as it is in our court, and do not take any advantage of that section.

Mr. McCord: To that I object on the ground that on counsel's own statement it is wholly immaterial, Your Honor.

Mr. Arctander: This is only as to the contributory negligence part. I think we have a right to offer it.

The Court: I overruled the objection before.

Mr. McCord: On counsel's statement, I now add an additional objection on the ground that counsel has said he does not rely upon it at all, and I therefore ask the court to prohibit him from reading it to the jury, when he now says to the court that he has asked an instruction disregarding the Alaska law, or relies upon the Washington law.

The Court: Do you have such an instruction?

Mr. Aretander: No. I do not say a thing about the
6 Alaska law in the instructions. I merely make the issue upon contributory negligence, that the plaintiff cannot recover if it is contributory.

The Court: Very well. Objection overruled.

Mr. Aretander: I suppose I can waive any rights I have. Ladies and gentlemen, let me read to you, as I said——

Mr. McCord: Give me an exception, Your Honor.

The Court: Exception allowed.

Mr. Aretander (continuing): —the law of Alaska:

"Chapter 45.

An Act to Fix the Liability of Employers for Personal Injuries Sustained by Their Employees."

"Section 1. That every person, association, or corporation engaged in the business of manufacturing, mining, constructing, building, or other business or occupation carried on by means of machinery or mechanical appliances shall be liable to any of its employees"—leaving out in case of death—"liable to any of its employees * * * for all damages which may result from the negligence of any of its or his or their officers, agents, or employees, or by reason of any defect or insufficiency due to its or their negligence in the machinery, appliances and works.

"Sec. 2. That in all actions hereafter brought against a master or employer such as is mentioned in the first section hereof, to recover damages for personal injuries to an employee"——

I will waive the reading of the second section, if you have no objection, as long as I stand upon the law of Washington in that regard.

7 Mr. McCord: In order to keep the record straight as far as I am concerned, I now therefore ask the court to instruct the jury to desregard the statute counsel just read; first putting it before the jury and then saying he waives it.

Mr. Aretander: I have not read anything about contributory negligence.

Mr. McCord: He waives the right to that second section.

The Court: He is waiving section "b." Is the plaintiff insisting on section "a"?

Mr. Aretander: I insist on section "a."

The Court: Very well.

Mr. Aretander: If counsel objects to it and insists I shall read the whole thing, I will read it: But if he objects on the ground that it is not proper, of course I don't want any error on that ground.

Mr. McCord: I have made my objection.

The Court: I say that this section "*b*," I will consider that in my instructions. If you waive it——

Mr. Aretander: Yes, I just as leave waive that, I waive the section.

The Court: Yes.

Mr. McCord: It is now brought before the jury here, Your Honor, in the discussion, showing that under the law of Alaska, if the plaintiff was guilty of contributory negligence, if it be slight, he can nevertheless recover. It is different from the law of this state, but counsel has in this manner brought that matter before the jury and left it in their impression that that is a right which they have, but he says "I don't intend to rely upon it in the trial of this case; I have
8 got it before the court and into the record and before the jury, but I am not going to take the chance of being responsible for it." I ask the court at this time to direct the jury to disregard all reference to the provisions of the Alaska statute touching the difference in the doctrine of contributory negligence, as misleading and being contrary to what counsel has signified in open court that he is going to rely upon. He has, nevertheless, brought it before the jury in this discussion, and I ask that the court instruct the jury that that Alaska law has nothing to do with it, especially with this case, particularly in view of counsel's statements.

The Court. Well, you may submit an instruction such as you desire on that subject and I will consider it in giving my instructions to the jury.

Mr. McCord: I ask the court to give that instruction——

The Court: I will not instruct the jury at this time.

Mr. McCord: I say, I would like to have the record show that I except to Your Honor's refusal to instruct them at this time.

The Court: Very well. Proceed with your witness.

9 OLE SANDANGER, the plaintiff, having been first duly sworn, testified as follows:

(Mr. Aretander:)

Q. Your name is Ole Sandanger?
A. Yes sir.
Q. You are the plaintiff in this action?
A. Yes sir.
Q. How old are you?
A. Twenty-nine years old.
Q. Where were you born?
A. I was born in Norway.
Q. When did you come to this country, to the United States, how long ago,
A. About nine years ago.
Q. You have declared your intention to become an American citizen?
A. Yes.

Mr. McCord: I object to that as immaterial, Your Honor.

The Court: Objection overruled.

Mr. McCord: It is immaterial whether he is an American citizen or not.

Mr. Aretander: He has a right to be an American citizen.

Mr. McCord: He has a right to maintain this action, too.
The Court: Objection overruled.

(Mr. Arctander:)

Q. Are you married or single?
A. I am married.
Q. How long before you were hurt were you married?

Mr. McCord: I object to that as wholly immaterial.

A. Two months before I was hurt.

The Court: One moment. When an objection is made, do not answer until the court rules on it.

10 Mr. McCord: I object as immaterial—how long before his injury he was married—it has no bearing on this case.

The Court: Objection sustained.

Mr. Arctander: I offer it only for the purpose of showing or laying the foundation for the testimony of his wife showing his condition before he was married. That is the only object.

The Court: Sustain the objection.

(Mr. Arctander:)

Q. When did you arrive at Cordova?
A. The 13th of February, 1917.
Q. Under employment of the defendant?
A. Carlisle Packing Company.
Q. The 13th of February, 1917?
A. Yes sir.
Q. What day were you hurt?
A. The 7th of March, 1917.
Q. Where were you, or what instrument—or what place up there were you when you were hurt?
A. I was aboard a gasoline launch about 28 feet long.
Q. What was the name of it?
A. "C. P. C. No. 2."
Q. That means Carlisle Packing Company No. 2?
A. Yes sir, Carlisle Packing Company.
Q. What kind of a boat was it, in regard to being an open boat, or otherwise?
A. It was an open boat with a cabin on in the front.
Q. And let us impress upon you to speak loudly, Mr. Sandanger. The juryman down there in that corner has got to hear you, and the Judge and myself and those gentlemen at that table

11 Speak as loudly as you can, as if you were preaching.

Now, had you worked on that boat before the day that you were hurt on it?

A. Yes, I worked for two weeks, two weeks on board the same boat.
Q. For two weeks?
A. Yes.

Q. For the time of two weeks you had been on the boat?
A. Yes, for the time of two weeks.
Q. In other words, twelve or fourteen days?
A. Yes, something like that—fourteen days.
Q. That was the time that you had worked on the boat?
A. Yes sir, that was the time.
Q. When, with reference to the time that you were hurt, did you quit on that boat, how many days before?
A. I quit six days before.
Q. Then you quit?
A. Before I got hurt I quit on board the boat.
Q. I can't make out what you say; six weeks?
A. No, six days before I got hurt I quit on board the boat and then was working on the warehouse construction.

Mr. McCord: I didn't hear what he said.

(Mr. Arctander:)

Q. That would be about the first of March. I think I will bring that out. About the first of March that you quit on that boat then, was it?
A. Yes, about the first of March, yes.
Q. And up to the first of March you had worked on it for two weeks?
A. Yes, I had worked there for two weeks.
Q. Steady?
A. Steady.
Q. Did you or did you not work on it three days before you were hurt, or a day?
A. I worked on it for—well, it was four days before I got hurt.
Q. Four days before you were hurt?
A. Four days before I got hurt I worked on it one day.
Q. One day?
A. And that was last day.
Q. That was the last day you were on the boat until the day you were hurt?
A. Yes sir.
Q. Who was with you during the three weeks that you worked on the boat?
A. Mr. John Jorgenson. He was the captain and I was the engineer; was only two of us.
Q. Only two of you on at that time?
A. Yes.
Q. Did you cook any meals on the boat at that time?
A. No sir.
Q. How long after you came up there was it that you were put on this boat to work?
A. I was put on the boat the second day I came up there.
Q. The second day you came up there. This fourth day before you were hurt, when you said you were on the boat the last time before the day you were hurt, that would be then the 3rd of March?

A. Yes, about that, 3rd of March, yes sir.

Q. On that day tell the jury whether or not you were in
13 the oil house on the dock at the cannery?

A. Yes, I was in the oil house; four days before I got hurt, I was in the oil house.

Q. The fourth day before you were hurt?

A. Yes.

Q. On that day, what did you go in the oil house for?

A. I was in the oil house for priming oil for the machine, for the engine.

Q. Priming oil for the engine?

A. Gasoline.

Q. Priming oil is gasoline?

A. Yes sir.

Q. Now, tell the jury what there was in that oil house at that time in regard to containers of oil?

A. There was two hundred-gallon drums, one a kerosene and one gasoline, just standing side by side.

Q. On what?

A. On a rack, laying—built alongside of the wall.

Q. Out from the wall on a rack?

A. Yes, facing one end when you came in through the door.

Q. Were they standing up or lying down?

A. They was laying down alongside on the rack.

Q. As you came in the door, was there any one of them to your right or any one of them to your left more?

A. Yes, the gasoline drum was to the right and the kerosene drum was to the left when I came in through the door.

Q. And was there any other oil containers laying on that rack?

A. There was a barrel of lubricated oil.

Q. In a drum?

14 A. No, not a drum. A wooden barrel was laying on the same rack, about three feet away from the kerosene drum.

Q. Three feet further to the left?

A. Yes, further to the left.

Q. As you were coming in the door?

A. Yes.

Q. Were there at that time any other containers of oil not lying on the rack but standing up anywhere in the oil house?

A. No, there was barrels of paint and coal tar, but they were standing up and open in the upper end.

Q. And open in the upper end?

A. Yes.

Q. That was barrels?

A. Yes.

Q. These drums—called "drums," what were they made of?

A. They were made of iron.

Q. Were there any openings on them, or any place that could be opened on them?

A. There was an opening on top and cover was screwed off.

Q. You mean on the long side laying up?

A. On the long side laying— when it was laying down, the long side right on top.
Q. What was that?
A. I say little plug just screwed in there about two feet.
Q. What?
A. A little plug was screwed——
Q. Two feet?
A. No, I mean two inches.
Q. Two inches. Screwed into the top of the barrel?
A. Yes.
Q. As it was laying down?
A. Yes.
Q. Then was there anything on the front part of the barrel, the front end?
A. No, there was nothing in the front at all.
Q. Was there no opening there, nothing that could be opened?
A. No, I didn't see any.
Q. Didn't see anything?
A. No.
Q. No plug?
A. No, I didn't see any plug at all.
Q. Now, what was the color of those iron drums that you said laid there side by side?
A. It was black color, rusty iron color.
Q. Black rusty iron color. Was any part of those drums, either of the sides or of the top or of the end turning out toward the door painted in any way, by any color, either one of them?
A. No, there was no paint at all.
Q. No paint at all?
A. Not paint of any kind that I could see.
Q. No paint of any kind, neither white nor red, at the end of them?
A. No sir.
Q. The two were exactly alike, then; is that what you mean?
A. Yes, just exactly look alike, both of them—you could not tell any difference at all.
Q. You could not tell any difference?
A. No sir.
Q. Was there at the time anything painted, letters or any signs on them, to indicate what oil each of them contained?
A. No sir.
Q. Or indicate anything?
A. No sir, there was nothing, not marks of anything. Couldn't tell the difference at all.
Q. No letters painted or printed on them?
A. No sir, there was no letters.
Q. Was there any sign above them or around there anywhere, to show which was kerosene and which was gasoline?
A. No sir; couldn't tell the difference at all.
Q. Couldn't tell any difference. And at this time when you came

in the fourth day before you were hurt, what did you come in there for then?

A. I came in there for the priming oil for that engine.

Q. Priming oil?

A. Gasoline, yes.

Q. And did you have anything with you to get that in?

A. Yes, I had a little can, red can, that is made of copper; it is used for priming oil.

Q. It is used for the purpose?

A. Yes, used only for that purpose.

Q. It was red?

A. Yes; we used that.

Q. How big was it?

Mr. McCord: I object to that as immaterial, Your Honor. It was three or four days before. I object to it as immaterial, as to the size of the can that he brought in three days before.

17 The Court: Is it the same can?

Mr. Aretander: It would be proper because it would be in connection with the other testimony; that he had that before and used it, with reference to another five gallon can that was standing in the boat, which had been exhausted.

The Court: Objection overruled.

(Mr. Aretander:)

Q. What size was it, about?

A. It was about a quarter of a gallon?

Q. A quarter of a gallon?

A. Yes.

Q. That would make a quart, then. When you came in there this time about four days before, did you or did you not know which of the two drums contained gasoline and which one coal oil?

A. No, I didn't know at all. I had to test it, to put it in my hand to find out what was gasoline.

Q. Four days before?

A. Yes sir.

Q. You did it then too?

Mr. McCord: I move to strike that out as incompetent, irrelevant and immaterial and too remote.

The Court: Objection overruled. Motion denied.

Q. Did you do that at the time?

A. Yes.

Q. In what way could you get that to test it?

A. Well——

Q. What means did you have?

A. There was a pump we used for to pump the oil up, and I pumped a little in my hand and gasoline——

18 Q. From what?

A. From the gasoline drum I pumped first.

Q. Yes.

A. And then I saw it was gasoline, because the gasoline dries up when it gets in your hand, it dries up and——

Q. So you didn't pump from the other one that time?

A. Yes, I pumped from the other one too.

Q. At the same time?

A. Yes, to be sure that it was gasoline.

Q. To be sure?

A. Yes.

Q. And you got the gasoline and went out?

A. Yes.

Q. Now, had you during the time when you were there for the two weeks—any portion of the two weeks had you been in there before this time when you were in the oil house four days before?

Mr. McCord: I object to that as incompetent, irrelevant and immaterial.

The Court: Objection overruled.

A. No sir, I was not in there, because I used to have a five gallon can of gasoline——

Mr. McCord: I object to that as not responsive.

(Mr. Arctander:)

Q. Was that the only time you were in to get any priming oil there, this four days before?

A. Yes sir, that is the only time.

Q. Very well. Now, before going there this time when you went in to get the oil, where you had been there two weeks before, where had you got your priming oil then?

Mr. McCord: I object to that as irrelevant, incompetent and immaterial, two weeks before the accident occurred.

The Court: Objection overruled. It is showing the conditions there.

Mr. Arctander: Yes, and that being in connection with the other matter there of the testimony about this five gallon can.

Mr. McCord: I object to it on the further ground that it is too remote; the conditions that were there two weeks before this accident occurred is too remote on which to predicate any negligence.

The Court: If it shows the conditions were the same, it would be admissible.

Mr. Arctander: This is not in regard to conditions in the oil house, Your Honor; it is a question in regard to where he got his priming oil. He says he was not in the oil house, this is the first time he was there. I asked him where he got his priming oil during the two weeks when he worked there, and as I understand him the testimony will be this, that he got it from a certain five gallon can which was standing in the bunk in the boat, the same five gallon can——

The Court: You want to show that he did not go for this.

Mr. Arctander: Well, that he got it from there and that he had exhausted that before he left.

The Court: Overruled.

Q. Now, so when you got it during those two weeks that you were there, where did you get it?

Mr. McCord: I object to that, Your Honor, on the ground that on counsel's statement it is incompetent, irrelevant and immaterial where he was getting his gasoline, if it was not from this place where the oil was kept, to show the conditions. What difference does it make, what possible difference can it make whether he got it somewhere else or not.

The Court: Objection overruled.

(Mr. Arctander:)

Q. Where did you get it during those two weeks—your priming oil?

A. I got it from a five gallon can that was standing in the lower bunk, lower bed.

Q. On this same boat?

A. The same boat, on the port side.

Q. Before you quit there, by the time you quit—before this time when you say you went into the oil house, state how much there was left of the gasoline in that five gallon can?

Mr. McCord: I object to that, Your Honor, as irrelevant, incompetent and immaterial.

The Court: I do not hardly see how that would be material.

Mr. Arctander: You do not understand it because you have not seen the depositions, but the claim is made—I don't know whether counsel wants to mislead the court or not—but the claim was made——

Mr. McCord: It might be admissible on a part of it, or in rebuttal, I do not think it is admissible at this time.

Mr. Arctander: Well, I thought I would have it in connection with his work theretofore. As to this five gallon can, it will be shown that it stood there at the bunk and that that did not explode—the contents of it. I wanted to show by this witness that that one was emptied out and was empty at the time of this accident; but coming in in connection with the explosion, I don't see that it makes any difference whether I show it now or later on.

The Court: Sustain the objection.

(Short recess.)

(Mr. Arctander:)

Q. Mr. Sandanger, on this 7th day of March, 1917, when you went to this motor boat or aboard this motor boat, what time of day was it when you went to work?

A. Seven o'clock in the morning.

Q. You had your breakfast before you left?
A. Yes sir.
Q. All of you?
A. Yes sir.
Q. Who was captain of the boat?
A. Iver Stensland.
Q. He was the foreman of the company up there?
A. He was the captain and the foreman.
Q. Who was engineer of the boat on that trip?
A. Isaac Utness.
Q. Isaac Utness?
A. Yes, Mr. Isaac Utness.
Q. And who were the crew?
A. Mr. John Jorgenson and I.
Q. And you. Do you remember that a fire was started in the stove in the forecastle of that boat, a little before lunch?
A. Yes.
Q. For the purpose of heating the lunch?
A. Yes.
Q. Who started that fire in the stove?
A. Mr. Utness started it.
Q. That same Isaac Utness?
A. Yes.
Q. And who cooked the lunch?
A. He did.
Q. Now, what time was it he started the fire, about what time of day?
A. He started that fire about twenty minutes after eleven.

(Mr. McCord:)

Q. What time?
A. Or a half an hour after eleven. Half past eleven.
Q. About half past eleven?
A. Yes.
Q. And that was Utness?
A. Yes.
Q. You saw him do it, did you?
A. Yes.
Q. Make the fire?
A. Yes.
Q. Positively?
A. Yes.

Mr. McCord: I object to that as leading and argumentative.
Mr. Aretander: All right. Withdraw it.

(Mr. Aretander:)

Q. What was it that was cooked for lunch there, warmed?
A. Vegetable soup.
Q. Vegetable soup and what else?

A. Coffee.

Q. Any meat cooked?

23 A. No sir.

Q. Did you have any meat for that lunch?

A. Yes, we had some cold meat from the cannery.

Q. Cold meat from the cannery?

A. Yes.

Q. Where was the dinner served, in the forecastle or on the deck or where?

A. Served on deck.

Q. Who brought it up?

A. Mr. Iver Stensland.

Q. Anybody else with him?

A. Isaac Utness.

Q. Those two brought it up?

A. Yes, them two.

Q. Where did you take your lunch, where on the boat did you take your lunch?

A. We took it on deck.

Q. How long a time did it take you to eat your lunch?

A. Took us about twenty minutes to a half an hour.

Q. Now, after you had taken your lunch, what did you do?

A. We was—after we had taken our lunch, we was running along the bay, hunting.

Q. Along the bay, hunting; hunting what?

A. Hunting for ducks and eagles.

Q. Ducks and eagles?

A. Yes.

Q. And how long a time did that take you—your hunting expedition?

A. Oh, about—ran along the beach about an hour and a half after we started eating.

24 Q. After you started eating or after you quit eating?

A. After we started eating—about an hour and a half up to two hours.

Q. An hour and a half to two hours?

A. Yes.

Q. How many did you shoot—how many ducks did you shoot?

A. I shoot—we shoot two ducks and a couple or three eagles.

The Court: Eagles?

A. Yes, eagles.

(Mr. McCord:)

Q. What else were you shooting?

Mr. Arctander: And eagles—two or three eagles.

(Mr. Arctander:)

Q. Now, if it was twelve o'clock you started eating and—you were through with your hunting about two o'clock. What did you do then?

A. Iver Stansland told me to go down and make a fire in the stove.
Q. For what?
A. To heat up the dishwater, wash the dishes.
Q. And what time about in the day was that?
A. It was about two o'clock.
Q. About two o'clock?
A. Yes.
Q. Did you obey his order, did you go down there to do it?
A. Yes, I went down.
Q. He told you to do it, did he?
A. Yes, Iver told me to do it.
Q. That is the captain?
A. The captain of the boat.
Q. Now, in the meantime, after the lunch had been warmed and carried up on deck, from that time and up to the time that you went down to start the fire, who of you had been down in the forecastle at all?
A. There was nobody down after they brought the lunch up.
Q. No one there that time?
A. No, I was the first one that went down after that.
Q. Before you went down there at this time at two o'clock, or about that time, when you went down to start the fire, had there been any fire put down there?
A. No.
Q. Any wood put in the stove by anyone?
A. No, nothing.
Q. What was the fuel which was provided for the boat for that day and with which the lunch was cooked?
A. It was broke up egg boxes, them thin egg boxes.
Q. Thin egg boxes?
A. Yes.
Q. Broken up?
A. That is all.
Q. What was the condition of that wood, that fuel, as to being dry or wet?
A. It was all wet. It was laying under the exhaust pipe on the port side?
Q. What?
A. Was laying on the port side under the exhaust pipe.
Q. Under the exhaust pipe?
A. Yes.
Q. Was there anything the matter with the exhaust pipe that day?
A. Yes.
Q. What was it?

Mr. McCord: I object.

A. She was leaking.

Mr. McCord: Hold on a minute. I object to that as immaterial.

The Court: I suppose it is only material, in fact, for the purpose of showing the condition of the wood.

Mr. Aretander: Showing that the wood was laying there and the exhaust pipe leaked.

(Mr. Aretander:)

Q. What is the fact in regard to whether there was anything the matter with the exhaust pipe, and, if so, what was it?

A. She was leaking, the water comes out.

Q. What?

A. She was leaking.

Q. Much or little?

Mr. McCord: I object to it as immaterial—irrelevant, immaterial and leading.

The Court: Overruled.

A. Not awful much. The water came a little all the time on the exhaust pipe.

(Mr. Aretander:)

Q. Did that have anything to do with the wood that was laying over in that place?

A. Yes, sure, the water was splashing all over the wood and half of the floor too.

Q. What?

A. The water was splashing all over the wood that was laying there.

Q. And what was it you said more?

27 A. And half of the floor, too, was wet from the exhaust pipe was leaking.

Q. Half of the floor was wet?

A. Yes.

Q. Do you know where that fuel was taken from when it was put down at this place in the forecastle, where it was kept before that?

A. They keep that before in the fish room.

Q. What is the fish room?

A. That is in the middle of the boat; use it to put the fish in.

Q. The hold of the boat?

A. Yes, there is a hole in the boat.

Q. How far did the hole extend in regard to the width of the boat, or whether it was the whole width or only a portion of it?

A. It was—I guess it was about ten feet long.

Q. I didn't ask you how long it was. Was that the length across, is that what you call the length?

A. Yes—no——

Q. Across the boat?

A. Across——

Q. Don't you understand English? I asked you how far that hole extended, whether to the edges of the boat or not, if it was in the center or where?

A. It was in the center.
Q. How wide was the boat?
A. It was from the cabin of the boat and aft.
Q. That is the boat, the length of the boat and width of the boat. How far did that hole go out, to the edges of the boat?
28 A. It was six inches on each side.

Mr. McCord: I object to it as leading.
Mr. Arctander: It is not leading.
Mr. McCord: He can describe the size of the hole. Counsel can ask it without telling how wide it was.
The Court: Objection overruled.

(Mr. Arctander:)

Q. Now, tell the jury, if you get a chance.
A. There was six inches back on each side of the boat.
Q. On each side of the hole?
A. Yes.
Q. Was there any cover for that hole?
A. Yes, we used hatches put on.
Q. Some what?
A. Hatches—boards.

The Court: Hatches.

(Mr. Arctander:)

Q. Hatches. Were the hatches tight or open?
A. No, they were not tight. Was about an inch between each hatch, or so.
Q. Between each board?
A. No—yes, that inch board.
Q. What was the condition up in that country during that spring in regard to raining?

Mr. McCord: I object to that as immaterial, irrelevant and incompetent.
The Court: Objection overruled.

A. It was raining pretty bad every day.

(Mr. Arctander:)

Q. What part of the day?
29 A. Oh, all the time, and in nights and day time.
Q. I mean of the day—you say pretty near every day, but how much of a portion of the day would it rain, either all day or a half a day or a short time?
A. It rained the whole day.
Q. State whether or not there was any coal at all furnished for the use of that stove on board the boat, or any coal at all?

Mr. McCord: I object to it as incompetent, irrelevant and immaterial.

A. No sir.

Mr. McCord: Wait when I object.

Mr. Aretander: You have to wait very often, but then you wait.

The Court: When an objection is made, let the attorney make the objection. He has a right to it. And wait until the court rules on it. If it is proper for you to answer, I will let you answer, and, if it is not, I will not let you answer.

Mr. McCord: I object to it as incompetent, irrelevant and immaterial.

The Court: Was it whether there was any coal on the boat?

Mr. Aretander: Yes, whether any coal was furnished at all.

The Court: Objection overruled.

A. No sir, there was not any coal.

(Mr. Aretander:)

Q. Now, this stove on which your lunch was cooked, where was that located, in what place on the boat?

A. On the starboard side.

Q. Well, that don't tell us where in the boat it was.

A. It was standing on a bench.

Q. Can't you understand? I want to know what portion of the boat it was.

Mr. McCord: He has already stated.

A. It was standing in the forecastle.

Q. Well, then, why didn't you say that. That is what I wanted to know. In the forecastle.

Mr. McCord: I object to counsel browbeating his witness, Your Honor.

(Mr. Aretander:)

Q. Where in that forecastle did that stove set?

A. It was stood on the starboard side, on a bench.

Q. And how was the bench fastened, where was the bench running?

A. It was running along the starboard side.

Q. Of the boat?

A. Yes.

Q. In the forecastle?

A. In the forecastle.

Q. Do you know how that bench was fixed, whether it rested upon anything along the wall?

A. Yes sir.

Q. What did it rest on?

A. It rested on braces.

Q. The bench was?

A. Yes.

Q. Did it go right up to the wall of the boat?

A. Yes, right up to the side of the boat.
Q. How high was that bench from the deck in the forecastle?
A. About two feet.
31 Q. Two feet?
A. Yes sir.
Q. How far, about, did it extend from the wall, how far did it come out from the wall?
A. Oh, about—came out about ten inches or twelve inches—about a foot.
Q. About a foot?
A. Yes.
Q. Did that stove—you said it stood on a bench; did it stand directly on a bench or not?
A. It was standing on a rack that was built for the stove.
Q. A rack built for it?
A. Built for the stove, yes.
Q. And up towards the wall of the boat, what did the rack rest upon, what was it fastened to?
A. The ends was fastened right in the side of the boat, and then there was two feet in front.
Q. In front of the stove?
A. Yes.
Q. There was two feet for the rack to extend——
A. For to rest on the bench.
Q. What were those?
A. There was iron.
Q. What was the rack?
A. Iron.
Q. And how high were these feet, about, in the front part of the bench?
A. About three or four inches.
Q. Three or four inches. What kind of a stove was this?
A. It was a thin cast iron stove.
32 Q. Cast iron stove?
A. Just like pipes, thin.
Q. Like the stove pipe, ordinary stove pipe?
A. Yes.
Q. Well, that is not cast iron, is it? Isn't that sheet iron?
A. Well, sheet iron.
Q. Well, why didn't you say so, then? A sheet iron stove. What size was it?
A. It was about two feet long and about one foot wide.
Q. One foot wide and how high was it?
A. About——
Q. The stove itself?
A. The stove itself, about eight inches high.
Q. Eight inches high. And you have seen these ordinary camp stoves?
A. Yes.
Q. Was it of that character?